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TRANSCRIPT OF RECORD

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UNITED STATES
COURT OF APPEALS

FIFTH CIRCUIT.

No. 16,453

CONTINENTAL CASUALTY CO.,

Appellant,

versus

EDGAR WILLIAM STOKES,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(ORIGINAL RECORD RECEIVED JAN. 7/57.)

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On September 20, 1954 PETITION for REMOVAL was filed in the words and figures as follows:

(Sheriff's Return omitted, pursuant to designation.)

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION.

No. 5807-M-Civil.

EDGAR WILLIAM STOKES,
Plaintiff,

versus

THE CONTINENTAL CASUALTY COMPANY, a corporation organized under the laws of the State of Indiana, qualified to do business in the State of Florida,
Defendant.

Comes Now the defendant The Continental Casualty Company bt its undersigned attorneys, and presents and files its petition for the removal of this action from the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, in which Court this action is pending, to the District Court of the United States in and for the Southern District of Florida, Miami Division, being the district and division within which this action is pending, and shows unto the Court as follows:

1. That this action was commenced in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, on the 27th day of August, 1954 that the defendant was served with process and the complaint in said action by a deputy sheriff of Dade County, Florida, on the 30th day of August, 1954.

2. That this action is one of a civil nature of which the District Court of the United States has original jurisdiction, in that it involves a controversy between citizens of different states, and the amount of the controversy involved exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

3. That the defendant is and was at the time of the institution of this action a corporation organized under the laws of the State of Indiana, licensed to do business in the State of Florida, and a non-resident of the State of Florida.

4. That the plaintiff is and was at the time of the institution of this action a citizen and resident of the State of Florida.

5. Petitioner files herewith a bond with good and sufficient surety, under the statute in such cases made and provided, conditioned that the defendant will pay all costs and disbursements incurred by reason of these removal proceedings should it be determined that this action was not removable or was improperly removed.

6. Upon the filing of this petition and said bond, your petitioner will give written notice thereof to all adverse parties.

7. A copy of this petition has this date been filed with the Clerk of the said Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County.

8. Petitioner attaches hereto and files herewith a copy of all process pleadings and orders served upon and by it in this action in said Circuit Court.

9. The time within which this petition is required to be filed has not yet expired.

Wherefore, petitioner prays that this Court take jurisdiction of this action and that the removal of this action to this Court be hereby effected.

KNIGHT, SMITH & UNDERWOOD,
Attorneys for Defendant.
By (S.) ROBERT F. UNDERWOOD,
(Robert F. Underwood).

804 Ingraham Building,
Miami, Florida.

State of Florida,
County of Dade, ss.

Before me, the undersigned authority, this day personally appeared S. Victor Tipton, who, being first duly sworn, says:

That he is associated with the law firm of Knight, Smith & Underwood, Attorneys of record for the defendant, The Continental Casualty Company that he is authorized to and does make this affidavit for and on behalf of said defendant; that he has read the foregoing petition, and that the matters and things therein stated are true.

(S.) S. VICTOR TIPTON.

Subscribed to and sworn before me this 20th day of September, 1954.

JULIAN A. BLAKE,
Clerk.
By (S.) ANNA M. FITZSIMMONS,
Deputy Clerk, U. S. District
(Court Seal) Court.

COMPLAINT FOR DECLARATORY DECREE.

Filed for Record Aug. 27 1:11 PM, 1954, E. B. Leatherman, Clk, Ct., Ct., Dade Co., Fla.

In the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, In Chancery.

Edgar William Stokes, Plaintiff,

vs. No. 172108.

The Continental Casualty Company, a corporation organized under the laws of the State of Indiana qualified to do business in the State of Florida, Defendant.

1. On February 20, 1956, the defendant, The Continental Casualty Company, a corporation organized under the laws of the State of Indiana, qualified to do business in the State of Florida, for a valuable consideration, executed and delivered to the plaintiff, Edgar William Stokes, a health and accident policy, a photostatic copy of which is attached hereto.

2. Plaintiff paid to the defendant all premiums required to be paid pursuant to the terms and provisions of said policy.

3. On February 26, 1952, while the aforementioned policy was in force and effect, the plaintiff was involved in an automobile accident, the proximate result of which was that he was rendered totally disabled within the terms of said policy.

4. The defendant made payments to the plaintiff in accordance with the terms and provisions of said policy to and including September 10, 1952 at which time it refused to make any further payments to the plaintiff.

5. At all times subsequent to February 26, 1952, the plaintiff has been totally disabled within the terms and provisions of said policy, and said policy has been in force and effect.

6. The plaintiff has made demand upon the defendant for the payment of total disability benefits, as provided for in said policy, but said demand has been refused.

7. The plaintiff has engaged the services of his attorneys of record and has agreed to pay to them a reasonable fee.

Wherefore, plaintiff prays:

1. That the Court will take jurisdiction of the subject matter and of the parties.

2. That the Court will enter a declaratory decree adjudicating whether or not the plaintiff is totally disabled within the meaning of the policy, and determining the benefits, if any, to which the plaintiff is entitled under the terms of said policy.

3. That the defendant be required to pay to the plaintiff's attorneys of record a reasonable fee for their services.

J. FRITZ GORDON and
ANDERSON & NADEAU,
By THOMAS ANDERSON,
Attorneys for Plaintiff.

904 First National Bank Bldg.,
Miami 32, Florida.

In the United States District Court in and for the Southern District of Florida, Miami Division.

Edgar William Stokes, Plaintiff,

vs. No. M-Civil.

The Continental Casualty Company, a corporation organized under the laws of the State of Indiana qualified to do business in the State of Florida, Defendant.

Certificate of Clerk.

I, E. B. Leatherman, as Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, hereby certify that a true copy of the foregoing petition for removal has this date been filed with me.

Dated at Miami, Florida, this 20th day of September, 1954.

E. B. LEATHERMAN,
as Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County.

By (S.) L. G. MOORE,
As Deputy Clerk.

(Court Seal)

On February 16, 1955 ANSWER of Defendant was filed in the words and figures as follows:

(Caption Omitted.)

Comes now the defendant The Continental Casualty Company by its undersigned attorneys and for answer to the complaint and each count and paragraph thereof, says:

1. The defendant specifically denies each and every allegation of said complaint and each count and paragraph thereof, separately and severally, except as herein expressly admitted.

2. The defendant admits the allegations of paragraphs one and two of said complaint.

3. The defendant admits the execution and delivery of the policy of insurance described in said complaint and admits that the photostatic copy of the policy attached to the complaint is a true copy of the original.

4. The defendant specifically denies that the plaintiff has been rendered totally disabled as alleged in paragraph three of said complaint and denies that the plaintiff has sustained any disability coming within the promise and undertaking of said policy of insurance.

5. For a further defense, the defendant says that the disability of the plaintiff, if any, did not come within the promise and undertaking of the defendant as prescribed in said policy of insurance so as to render the defendant liable for the monthly indemnity provided therein. The policy of insurance provides that the monthly indemnity

shall be as payable upon the happening of the following conditions:

"Part II. Indemnity for loss of Time from Disability:

Indemnity is not payable under this Part for any loss of time or disability for which indemnity is payable under Part I, nor is it payable for the first.....three months .....of any period of loss of time. Subject to these exceptions, if the insured shall be disabled by accidental injury or by sickness and by reason of such disability shall necessarily suffer loss of business time, the Company will pay indemnity for such loss as follows:

A. Total loss of business time. If the said loss is of all business time, the Company will pay said monthly indemnity so long as the Insured lives and continuously suffers such total loss,

B. Partial Loss of Business Time. If the said loss of business time is not total but results from the physical inability of the Insured to perform work substantially essential to the duty or duties of his occupation, and if further such partial loss of time immediately succeeds a period of total loss of time for which indemnity is payable under the provisions of this part, the Company will pay one-half said monthly indemnity for the continuous period of such partial loss of time not exceeding six months.

Attention is called to the fact that no indemnity is payable under the provisions of Part II for the first part of any period of disability.

Part III. Hospital Indemnity:

If the Insured by reason of accidental injury or sickness shall be under treatment and also be resident in a licensed hospital, the Company will pay in addition to whatever other indemnity may be payable under this policy, 25 per cent of said monthly indemnity for the continuous period of such residence and treatment, commencing at the first day thereof and not exceeding three months during which he is disabled from performing all the duties of his occupation, but such indemnity will not be paid for more than one period as the result of any one accident or disease or during any continuous disability."

Defendant avers that prior to the time of said automobile accident described in said complaint, the said plaintiff retired from his practice as a physician and completely discontinued and abandoned such practice and sold a hospital located in Louisville, Kentucky, which he previously owned and operated, and completely disassociated himself from the operation of said hospital, either directly or indirectly. At the time of the alleged automobile accident on February 26, 1952, the said plaintiff was not gainfully employed nor engaged in any type of business or profession, or devoted any time to a business or profession, so that the claimed disability, if any, did not cause the plaintiff to suffer either a total or partial loss of business time, so as to entitle him to monthly indemnity as provided in said contract of insurance.

The defendant further avers that the plaintiff was not injured or disabled by the alleged automobile accident so as to render him incapable or unfit to carry on his former business or occupation, nor was the claimed disability

severe enough to cause him to suffer a total or partial loss of business time, had he chosen to carry on his former business or occupation.

DEMAND FOR JURY TRIAL.

The defendant demands a trial by jury of all issues in said cause.

KNIGHT, SMITH & UNDERWOOD,
By (S.) JACKSON T. PETERS,
Attorneys for defendant.

804 Ingraham Bldg.,
Miami 32, Florida.

(Certificate of Service).

On September 27, 1956 MOTION of Defendant TO SUPPRESS AFFIDAVIT OF HERBERT S. SAWYER was filed in the words and figures as follows:

(Caption Omitted.)

Defendant, Continental Casualty Company, by its undersigned attorneys, moves the Court to suppress the affidavit of Herbert S. Sawyer as being an entirely improper basis for the determination of attorneys' fees in this case, and as being entirely insufficient in subject matter of the affidavit upon which any conclusion as to an accurate and just fee could be predicated.

And for the further reason that the fees suggested therein is exorbitant and entirely without reason or basis.

CONTINENTAL CASUALTY
COMPANY, a corporation,
By CAREY & PAPY,
Attorneys for Defendant,
By (S.) WESLEY G. CAREY,
Of Counsel.

CAREY & PAPY, Attorneys,
548 Seybold Building,
Miami 32, Florida.

I Do Certify that copy was this 27th day of September 1956 delivered by hand to: Anderson & Nadeau, Attorneys for Plaintiff.

(S.) WESLEY G. CAREY,
Attorney.

On October 2, 1956 AFFIDAVIT of HERBERT S. SAWYER was filed in the words and figures as follows:

(Caption Omitted.)

State of Florida,
County of Dade, ss.

Herbert S. Sawyer, being first sworn, says: That he is a member of the bar of the Supreme Court of Florida and the Supreme Court of the United States, and that in the course of his practice he has had numerous occasions to litigate questions arising under various forms of insurance including life, accident, health and casualty policies; that he has examined the office file of the attorneys for the plaintiff in the above case, together with

Volumes I and II of the Transcript of Testimony, and has supplemented information contained in those files by ascertaining from counsel of record for the plaintiff other material and relevant factors concerning the case, that he is aware of the issues presented in said cause, and from such kuowledge and such examination is of the opinion that a reasonable fee to be allowed the plaintiff's attorneys for services rendered herein is the sum of $3000.00.

(S.) HERBERT S. SAWYER,
(Herbert S. Sawyer).

Subscribed and Sworn to before me this, 24 day of September, 1956.

(S.) VIVIAN CLARK,
Notary Public, State of Florida
(Notary Seal) at Large.

My commission expires May 28, 1959.

On October 2, 1956 FINDINGS OF FACT and CONCLUSIONS OF LAW was filed in the words and figures as follows:

(Caption Omitted.)

1. The plaintiff is a citizen and resident of the State of Florida, the defendant is a corporation organized under the laws of the State of Indiana but is qualified to do business in the State of Florida. The matter in controversy exceeds the sum or value of Three Thousand and 00/100 Dollars ($3,000.00) exclusive of interest and costs.

2. On February 20, 1926, the defendant issued to the plaintiff a non-cancellable income policy No. C-110285 a

copy of which was attached to the complaint and admitted in evidence in this case. By the terms of this contract, the defendant insured the plaintiff against certain described contingencies more particularly set forth in Parts I and II of said contract, and upon the happening of said contingencies agreed to pay to the plaintiff a monthly indemnity of Two Hundred and 00/100 Dollars ($200.00). Part II of said contract provides as follows:

Part II.—Idemnity for Loss of Time from Disability:

"Idemnity is not payable under this Part for any loss of time or disability for which

"indemnity is payable under Part I, nor is it payable for the first three months of any period of loss of time. Subject to these exceptions, if the insured shall be disabled by accident injury or by sickness and by reason of such disability shall necessarily suffer loss of business time, the company will pay indemnity for such loss as follows:

"A. Total loss of Business Time. If the said loss is of all business time, the Company will pay said monthly indemnity so long as the Insured lives and continuously suffers such total loss.

"B. Partial loss of Business Time. If the said loss of business time is not total but results from the physical inability of the insured to perform work substantially essential to the duty or duties of his occupation, and if further such partial loss of time immediately succeeds a period of total loss of time for such indemnity is payable under the provisions of this part, the Company will pay one-half and monthly indemnity for the continuous period of such partial loss of time not exceeding six months

"Attention is called to the fact that no indemnity is payable under the provisions of Part II for the first part of any period of disability."

3. Said policy was in full force and effect on February 26, 1952, and has been in full force and effect at all times since then, and the plaintiff has duly paid to the defendant all premiums due on said policy of insurance for the period up to and including the date of trial of this action.

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4. The plaintiff was involved in an automobile accident on February 26, 1952, as a result of which he filed a claim with the defendant for the benefits due to him under said policy, and the defendant made payments to the plaintiff in accordance with the provisions of said policy to and including September 10, 1952, at which time it discontinued such payments and refused to make any further payments.

5. According to the testimony of the witness Keedy, who saw the plaintiff for the first time on January 30, 1953 the plaintiff shows a marked disability in his mental functioning power and is suffering from loss of mental efficiency, which condition has existed certainly from the time of said accident on February 26, 1952. According to the testimony of this witness the plaintiff cannot operate mentally in an efficient way and is occupationally completely disabled. It sufficiently appears from the testimony of this witness that the plaintiff has not feigned or attempted to exaggerate his complaints; that he is an extremely unstable, emotional type of individual, and that prior to the accident he had already experienced some difficulty in pursuing the occupation in which he was then engaged, as referred to in the said policy. According to

the said witness, the accident itself exaggerated a pre-existing phycho-neurotic tendency. This witness's diagnosis and prognosis were at least partially confirmed by the appearance and demeanor of the plaintiff on the stand. There is other corroborating testimony in general as to the disability of the plaintiff, from all of which the Court has reached the conclusion that the plaintiff is, and at all times since February 26, 1952, and possibly for some time prior thereto, has been totally and permanently disabled by reason of sickness within the meaning of said policy and has suffered a total loss of business time during the entire period.

Conclusions of Law.

1. It is found that this Court has jurisdiction of the parties and the subject matter.

2. By reason of his total and permanent disability the plaintiff is entitled to the payment specified in the policy at the rate of $200.00 per month beginning with September 10, 1952, as long as said disability continues, with interest of the sums due at the date of this judgment at the rate of six percent (6%) per annum from the time at which said payments should have been made.

3. The plaintiff is entitled to recover reasonable attorneys' fees for the services of his attorneys in prosecuting this suit.

4. The plaintiff is entitled to judgment for costs incurred by him in prosecuting this suit, the amount of which will be determined on a verified cost bill and after notice to the defendant.

A judgment in accordance with these findings will be entered.

Done and Ordered in Chambers at Miami, Florida, this 1st day of October, A. D. 1956.

JOSEPH P. LIEB,
United States District Judge.

On October 2, 1956 FINAL JUDGMENT was filed in the words and figures as follows:

(Caption Omitted.)

This Cause was heard on the pleadings, the testimony taken in open Court in Case No. 5607-M-Civil entitled Edgar W. Stokes, Plaintiff vs. Continental Assurance Company, Defendant, in accordance with stipulation made in open Court, and certain portions of the depositions taken in this and the companion case of Edgar W. Stokes, Plaintiff vs. The Travelers Insurance Company, Defendant, Case No. 5802-M-Civil, admitted in evidence herein, from which pleadings and evidence the Court has heretofore made certain findings of fact and conclusions of law. It is accordingly

Ordered, Adjudged and Decreed as follows:

1. The Court has jurisdiction of the parties to this suit and the subject matter hereof.

2. The plaintiff is entitled to recover from the defendant the sum of $9,600.00 being the total amount of the monthly indemnity payments provided for in the policy

described in said complaint at the rate of $200.00 per month from September 10, 1952 to the date of this judgment, with interest on each of said monthly payments at the rate of six percent (6%) per annum from the time at which said payments should have been made beginning with September 10, 1952; and the defendant shall pay to the plaintiff the sum of One Thousand Seven Hundred and Fifty Dollars ($1,750.00) as reasonable attorneys' fees for services rendered herein, for which sums let execution issue.

Done ond Ordered in Chambers at Miami, Florida, this 1st day of October, A. D. 1956.

JOSEPH P. LIEB,
United States District Judge

On November 15, 1956 TRANSCRIPT OF TRIAL PROCEEDINGS had in this record (5807) together with the record in Case No. (5607) included therein which record was admitted in evidence in this cause by agreement, was filed in the words and figures as follows:

In the District Court of the United States for the Southern District of Florida, Miami Division.

Filed Miami, Fla., Oct. 9, 1956.

Edgar Stokes, Plaintiff,
vs. No. 5802-M-Civil.
Travelers Insurance Co., a corporation, Defendant.

Edgar William Stokes, Plaintiff,
vs. No. 5807-M-Civil.
Continental Casualty Co., Defendant.

Miami, Florida.
Thursday, September 6, 1956.

The above entitled causes, being consolidated, came regularly on for trial without jury before the Hon. Joseph P. Lieb, United States District Judge, in open Court at Miami, Florida, on Thursday, September 6, 1956, at 2:00 o'clock p.m.

Appearances:

Thomas H. Anderson, Esq., of the law firm of Anderson & Nadeau, appearing on behalf of the plaintiff.

James A. Dixon, Jr., Esq., of the law firm of Dixon, DeJarnette, Bradford & Williams, appearing on behalf of the defendant, Travelers Insurance Company.

Wesley G. Carey, Esq., of the law firm of Carey & Papy, appearing on behalf of the defendant, Continental Casualty Company.

The Court:

We have for trial today without a jury two cases, No. 5802, Edgar Stokes, Plaintiff, versus the Travelers Insurance Company, a corporation, and No. 5807, Edgar William Stokes, Plaintiff, versus the Continental Casualty Company. I understand that they have been consolidated for trial, but I don't see any order of record. So for the sake of the record the Court does now consolidate the two cases for trial, and it is ordered that they be tried together.

Is the plaintiff ready at this time in each of the cases?

Mr. Anderson:

Plaintiff is ready.

The Court:

You are ready. And how about the defendant in the first case, the Travelers Insurance Company? That is your client, Mr. Dixon.

Mr. Dixon:

Defendant is ready, Your Honor.

The Court:

In the second case the case of the Continental Casualty Company, are you ready?

Mr. Carey:

Defendant Continental Casualty is ready, Your Honor.

(Discussion off the record.)

The Court:

Do you want at this time on behalf of the parties to offer officially in evidence, so we will have a record of something? I don't know officially what it is.

Mr. Anderson:

Judge, maybe I can make a statement. It seems to me that perhaps we would be more nearly correct if the parties in open Court stipulated that these two cases would be tried before you upon the record on which Judge Choate based his decision, supplemented by the testimony which Doctor Stokes is to be permitted to give on the trial of this case, or with the right on the part of the defendant, Travelers Insurance Company, to offer in rebuttal of any testimony which Doctor Stokes brings out that was not produced before Judge Choate such evidence as it may have. I think a stipulation to that effect—

The Court:

Is that agreeable to you gentlemen?

Mr. Carey:

No, sir. I don't know whether he unintentionally omitted the name of Continental Casualty to have the same right—did you omit?

Mr. Anderson:

I didn't intentionally. I didn't know you had any idea. Your case is different.

Mr. Carey:

I don't know what Doctor Stokes is going to testify here at this hearing. We certainly want leave to bring in any evidence which would contradict or something.

Mr. Anderson:

I have no objection to it, if he says so.

The Court:

The stipulation will be as stated by Mr. Anderson with the addition referred to, and the additional remarks made by Mr. Dixon as to what his right will be to put on anything if he sees fit in connection with any rebuttal.

Now, I think that will make clear. You are going to have to help me about getting in evidence—I don't know what is here.

Mr. Anderson:

May I be heard on one more point? If I find it necessary, may I ask leave during the proceedings to put Mrs. Stokes on? I am not trying to get out of the agreement.

The Court:

Mrs. Stokes?

Mr. Anderson:

Yes, I would like to ask the Court to take it under consideration.

Mr. Carey:

We have stipulated to something here, Your Honor. Apparently counsel—

The Court:

I can appreciate the expected nature of her testimony, a wife of a man suing an insurance company. And I don't know what it is, but is it something you deem at variance with your other testimony?

Mr. Anderson:

Here was the only point I was going to offer her testimony on, that she had observed the doctor before the

accident and she observed him afterward, and that there was a change in his condition.

The Court:
Isn't that all in there?

Mr. Anderson:
I am not sure how well it is stated in her testimony before Judge Choate. That is my only concern.

The Court:
You look at it and see, and we will take it up when you come to it. I won't say you can and I won't say you can't, but it is not of any great consequence as far as the case is concerned. That lady is here; is that right?

Mr. Anderson:
She is in the Courtroom; yes, sir.

Mr. Carey:
She testified fully in the other hearing, Your Honor. I think one other thing we should cover, Your Honor—this is a suit in the nature of declaratory judgment, and I think in view of the fact the plaintiff is to be permitted to testify while we are using the record of the previous trial, that the matters and things which Your Honor will determine will be determined as of this date. That is, his condition is an issue, and it would normally be in issue, of course, as to the date of the hearing.

The Court:
Yes. That will particularly be taken care of by the testimony of the plaintiff, himself. He will be here and testify. And the doctors, of course, will testify as of the dates of their examinations. But the conclusions and all will be with reference to a trial as of today.

Mr. Dixon:

Your Honor, I think we might also add the additional matter Your Honor brought up the other day, and that is, that since there have been rulings made by Judge Choate as to the admissibility of evidence at the other trial, that we will in this hearing abide by those rulings and not call upon Your Honor to rule.

The Court:

Did you understand that, now Mr. Anderson?

Mr. Anderson:

Yes.

The Court:

The record would naturally be so bulky that if I don't have a chance to read it aloud in the presence of the attorneys here, there is no way of correcting anything that Judge Choate did. So we will abide by all of the rulings he made.

Mr. Anderson:

I understand.

The Court:

It is a trial without a jury, anyhow.

Mr. Anderson:

That's right.

The Court:

Anything further?

Mr. Anderson:

Yes, there is one other matter, Your Honor. In the case before Judge Choate, Continental Assurance—you

see, there are two cases, Continental Assurance and Continental Casualty. They are related, but they are not the same company. In the Continental Assurance case it was agreed that after the case was over with, if the jury found for the plaintiff, the plaintiff could submit affidavits as to the reasonable value of his attorney's services, and I should like to have the same privilege here. If you find that the plaintiff is entitled to recover, I should like to have the right to submit affidavits, rather than have lawyers wait here and read through this entire record. Subject, of course, to Your Honor's wish.

The Court:

Is it possible for you all to agree on a percentage of recovery or some other feasible means?

Mr. Dixon:

I don't see how we can without knowing the amount of work Mr. Anderson has put into the case. I have no way of telling that now.

The Court:

That can certainly apply to me. But I thought perhaps you might from your association with the case have—it is sometimes done, they do agree on a flat percentage.

Mr. Dixon:

It depends upon what Mr. Anderson wants.

The Court:

If you don't want to do it, we will do it according to—how do you want to do that, now?

Mr. Carey:

It was your suggestion, Mr. Anderson, that that issue be deferred until Your Honor's ruling; and of course,

there would be no such issue involved if there is a ruling for the defendants.

Mr. Anderson:

Well, I simply don't want to close the case without putting the proof in. That is all I am concerned with.

The Court:

The record will show, as it now shows, that counsel for the plaintiff has the consent of the Court that in the event the ruling of the Court is in favor of the plaintiff, to a later date take up the question of the proper amount of the statutory attorney's fees. We are not prepared to put on any such record at this time; is that it?

Mr. Anderson:

That's right.

The Court:

I wish you were, because I don't know how we are going to get about it. But I can see coming, also from the size of the record that seems to be here, that you may want to have a short oral argument. It will be up to you. Do you want that, do you think?

Mr. Carey:

I think it will be very advisable, Your Honor.

The Court:

At that time you might take up attorney's fees, unless you have some—how would be your suggestion of doing this the simplest way?

Mr. Anderson:

May I make this suggestion, Judge. I thought I would put on Doctor Stokes' testimony this afternoon and let

him be cross-examined, and then I would rest. If there is some evidence that is brought out that requires rebuttal, the defendants either now or at some convenient time with the Court and themselves can put on their rebuttal testimony. The Court then would consider the record made before Judge Choate together with this record and indicate what his judgment was going to be on the record and the pleadings and proof, and then I would submit to the Court affidavits with respect to attorney's fees, with the right for them to submit counter affidavits.

The Court:

I will see that is done.

Mr. Anderson:

I didn't think it was necessary for us to go to a lot of trouble this afternoon. I thought maybe the Court would like to read that record and then either with or without further argument—

The Court:

Without any prejudice to either side, I would say you stand fifty-fifty one way or the other, and if it is against you, there is no reason of going any further. If it is in your favor, we will proceed.

Now, there is a question the Court would like to know. It is clear about Mr. Dixon's client; that is the Travelers, isn't it?

Mr. Dixon:

Yes, sir.

The Court:

The issue here is solely whether or not the plaintiff is totally disabled, or as he claims, totally and permanently

disabled, as a result of the injuries received solely from accidential means?

Mr. Dixon:
That's right, sir.

The Court:
When you get into the other one, though, the Continental Casualty case, what is the issue there as to the right of the plaintiff to recover under that policy?

Mr. Carey:
The issue there, Your Honor, stated in brief and without foregoing my right to make a more complete statement on reading my policy, is that we contend that this man has not suffered a loss of business time by reason of either disease or sickness or by accident. The policy is one which agrees to pay certain sums upon loss—

The Court:
The last part is what I am interested in. This is a sickness policy as well as accident?

Mr. Carey:
Yes, sir.

The Court:
And by sickness, what is your understanding of the type of sickness that is covered here?

Mr. Carey:
Well, I prefer to read the policy in that respect. I think it is rather clearly stated, and I think possibly it might be well for Your Honor, in view of the fact that you are approaching a strange record, for us each re-

spectively to tell Your Honor what we expect to prove by this record and the additional evidence that is going to be put in.

The Court:

We didn't have any pre-trial in here, and it has occurred to the Court that before we get off on any tangent, if we could limit just exactly what counsel for the plaintiff is going to prove with regard to the Continental Casualty Company. What do you claim about that, Mr. Anderson? What do you claim will be the nature of your proof in order to recover under the complaint in this case?

Mr. Anderson:

Your Honor, I think it is sufficient for the plaintiff to prove that he had the policy, that he suffered the injury, that he is totally disabled. With respect to the Travelers, he is required to prove that he had an injury, accidental injury, and that he is disabled by reason of the accident. Now, if Mr. Carey wants to insist that Doctor Stokes was not gainfully employed, I intend to bring that out, anyway.

The Court:

Before you go on that, are you contending that the condition that you claim for Doctor Stokes, the plaintiff here, is all the result of that accident? I am concerned about this sickness business; I don't know what that is. If it is all the result of the accident, it will be simple. I am not telling you what to do, but you tell me.

Mr. Anderson:

I understand, Your Honor. The testimony that was taken before Judge Choate indicated that Doctor Stokes

had some kind of heart condition, that he was traveling to Florida for some reason which will be disclosed when he gets on the stand, and he had this accident; and that after the accident he has been completely disabled from following his occupation or any other occupation. That is, in a nutshell, what the plaintiff's case is.

The Court:

Is it your contention that in this suit the total disability or the total permanent disability which you claim for the plaintiff all was the result of this accident, or are you claiming that it is some sort of a policy which provides for sickness regardless of accident?

Mr. Anderson:

Oh, there is no doubt about that.

The Court:

Which is it?

Mr. Anderson:

Mr. Carey's position is, if I may state it, that he is not responsible for the time when Doctor Stokes was not gainfully employed.

The Court:

That is a different question. Let's get which part of the provision of the policy are we under? Let me ask again, simply if I can, do you claim that all of the disability for which you are now suing against Mr. Carey's client, the Continental Casualty Company is all caused by this accident, one, or do you claim that the condition that you find your client in was caused by some other thing which is also a risk under the policy?

Mr. Anderson:
Well, yes—

The Court:
Which is it?

Mr. Anderson:
May I amplify that by saying this, that he had the accident and he has certain claims as a result of the accident, and he also has a heart condition which disables him—and that all appeared in the Continental Assurance Company case which was tried before Judge Choate. Now, we can't recover for a heart condition against the Travelers, I understand that. But we can recover for any disability, regardless of how it was sustained, against Continental Casualty Company.

The Court:
Any disability, whether it was accident or sickness?

Mr. Anderson:
That's right.

The Court:
Do you mean to include in there heart trouble?

Mr. Anderson:
Yes, sir; as long as it took place after the policy was written.

The Court:
Now, with that explanation go to the next thing about the working days; what do you have to say about that? The policy provides for total disability or loss of working time?

Mr. Anderson:

Well, it doesn't exactly say that. May I suggest this, Judge. I am willing to go into this discussion as long as the Court is willing to participate in it. But it seems to me that it might facilitate the matter if you would let me put Doctor Stokes on the stand and then conclude the testimony, and then we can argue about the amount of proof as to the intent of the policy at your—

The Court:

You are better informed on that than I am. All right, we will proceed. Do you have any suggestion, Mr. Carey?

Mr. Carey:

Yes, sir. I would like to make one further observation, and that is that we are not conceding that in any event attorney's fees would be due in this case. That is why I have asked that that matter be deferred. It is our contention that would be decided by the Kentucky law on the subject, inasmuch as that this is a policy that was written and delivered to the plaintiff while a resident and living in Louisville, Kentucky.

The Court:

Will you be in position to present anything on that today? That, of course, is not in the record. Is it in the record?

Mr. Anderson:

That is not in the record, nor was the question of attorney's fees discussed in the record, because that, too—

The Court:

We have taken care of that. Are you in a position to provide the Kentucky law and the applicability of it?

Mr. Carey:

Except merely to tell Your Honor that it is a different statute than we have in Florida and provides for attorney's fees only for vexatious refusal to pay. In other words, if there is a bona fide dispute, and I think—

The Court:

Wait a minute. I see what you are talking. I thought you were talking about some Kentucky law with regard to the policy. But aren't you met with the situation that the action is brought in Florida? Doesn't the action carry with it the right to the attorney's fees, not the situs of the policy?

Mr. Carey:

I think that is a debatable point. I would think it is one of the rights of recovery, rather than a procedural matter.

The Court:

You are talking only about attorney's fees, however?

Mr. Carey:

Yes, sir, at the present moment.

The Court:

We will take that up later. But I now apprehend what you are talking about there.

The Court:

Anything further, Mr. Carey?

Mr. Carey:

One more point, Your Honor. In the record the index does not include Defendant's Exhibit 4. I have checked

the file in the preceding case, and the exhibit was admitted at Page 207 and 208 in the record; but it is not included in the index.

The Court:

I suggest that you and Mr. Dixon and Mr. Anderson get together and see that the record that you had before Judge Choate is the identical record you give me, no more or less. And you take care of that. All right.

Now, then, does anybody make any point about Mrs. Stokes being in the Courtroom?

Mr. Carey:

I have no objection to her being in the Courtroom if she is not going to testify. It is my understanding that she is not going to?

The Court:

Since I announced a few minutes ago we might reserve that question, it might be advisable that she retire.

Mr. Anderson:

All right, Mrs. Stokes, will you stay outside?

(Mrs. Stokes retires from Courtroom.)

Judge, one other point I am not sure about, and that is whether or not the Court in consideration of this case can take into consideration the depositions that were taken in the other case, as well as in the Travelers case and in this case. Now, there has been no discussion about that.

The Court:

I don't know. Do I understand you have depositions taken in this case which were not ever introduced in evidence in the—let's call it the "Judge Choate" case?

Mr. Anderson:

I think that is right. Isn't that so, Mr. Carey?

The Court:

What about that?

Mr. Carey.

That is my recollection.

Mr. Dixon:

I think so.

The Court:

You want to put that in?

Mr. Carey:

Due to the course of the evidence they were not read in. However, the electrocardiograms taken by Doctor Troutman were admitted into evidence without any objection on my part. They were offered by the plaintiff in that case.

The Court:

Is there any objection to any of you putting in depositions which were specifically taken for the cases on trial, and which perhaps for that reason were never used in the "Judge Choate" case, so long as they don't overlap?

Mr. Dixon:

No, I have no objection.

The Court:

All right, then either one of you can put in whatever you would like in that respect. You don't need to read them. I will read them, myself.

Mr. Anderson:

I promise you, I won't read any more than I have to, Judge.

The Court:

All right, now put on the plaintiff.

Thereupon: DR. EDGAR W. STOKES, a witness called in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Anderson):

Q. You are Doctor Edgar W. Stokes, the plaintiff in the two cases that are on trial here today?

A. Yes, sir.

Q. Where do you live, Doctor?

A. I live at Fort Lauderdale.

Q. You previously testified in the case that was tried before Judge Choate in this Court against the Continental Assurance Company?

A. Yes.

Q. Do you remember the general outline of your testimony that you gave in that case?

A. No, I don't.

Q. I hand you a photostatic copy of what appears to be an insurance policy, and ask you where you obtained that?

A. From the Continental Casualty Company.

Q. This paper was furnished to you by the Continental Casualty Company?

A. Yes, they furnished me a policy.

Mr. Anderson:

We offer it in evidence.

Mr. Carey:

We have no objection. It is one of the exhibits in the other case. We have no objection.

The Court:

Well, if it is in twice, it won't make too much difference. What are you now doing, putting in the specific policies in this case? I doubt if they are in the other case.

Mr. Carey:

I wish to correct myself on that. That is not in the other case.

The Court:

It couldn't be. The suit was on a different policy.

The Witness:

May I ask a question?

Mr. Anderson:

Don't ask—

The Court:

Just pay attention to your counsel, Doctor. Go ahead and put the other one in, too, if it is not debatable.

Mr. Anderson:

The Court admitted this one in evidence, didn't you?

The Court:
Yes, it is admitted in evidence without objection.

(Policy issued by Continental Casualty Company, being a photostatic copy, was thereupon received in evidence and marked Plaintiff's Exhibit No. 1.)

(By Mr. Anderson):
Q. Doctor, I hand you another document and ask you what this is?
A. Travelers Insurance Company.
Q. Well, it is a copy of the insurance policy?
A. It is a copy of the insurance policy.
Q. Where did you get this photostat?
A. From the Travelers Insurance Company.

Mr. Anderson:
We offer it in evidence.

Mr. Dixon:
We have no objection.

The Court:
Admitted in evidence as Plaintiff's Exhibit No. 2.

(Policy issued by Travelers Insurance Company, being a photostatic copy, was thereupon received in evidence and marked Plaintiff's Exhibit No. 2.)

(By Mr. Anderson):
Q. Did you make a claim for benefits due or claimed to be due to you by Continental Casualty Company under Plaintiff's Exhibit 1 after the automobile accident of February 26, 1952?
A. Yes.

Q. Did you receive any payments on account of that proof of claim?

A. I received payments for a concussion for about the first six months.

Q. All right. Did you make similar proof of claim with the Travelers under the policy, Exhibit 2?

A. Yes.

Q. Did you receive any benefits from that proof of claim?

A. Yes. I received benefits for my concussion for about the first six months.

Q. I didn't ask you about the concussion. I asked you if you received benefits under the proof of claim?

Mr. Dixon:

Your Honor, I don't want—

Mr. Anderson:

I will agree it may be stricken.

Mr. Dixon:

I don't want to interrupt. I know the Court will ignore of its own knowledge immaterial testimony, unresponsive testimony, and conclusions.

The Court:

Yes, the Court will. And I appreciate sometimes, counsel, you have the same problem, getting the witness to stay on the track. But you will not need to make very many objections. Mr. Anderson, try to—

Mr. Anderson:

I agreed, Your Honor, it may be stricken.

Mr. Dixon:

To save time, may we have our objections considered as made to anything that may be improper, due to the fact you are hearing the case without a jury?

The Court:

Yes, you are making an objection; but in this particular case there is nothing to object to. It hasn't prejudiced the Court, and the record does not show that anything is admitted here.

(By Mr. Anderson):

Q. You received those benefits for how long, Doctor?

A. About six months.

Q. And you have not received any since?

A. No.

Q. Did you pay the premium that was due the Continental Casualty as reflected by the paper I am handing you?

A. Yes.

Q. Did you get this receipt from the company?

A. Yes.

Mr. Anderson:

We offer it in evidence.

Mr. Carey:

We have no objection.

The Court:

Let it be admitted without objection.

(Receipt for premium to Continental Casualty Company was thereupon received in evidence and marked Plaintiff's Exhibit No. 3.)

(By Mr. Anderson):

Q. What about premium payments that you have made to the Travelers Insurance Company, have you been making those?

A. The Travelers Insurance Company refused to accept any more payments.

Q. Did you tender the payment to them?

A. Yes. They returned my check.

Q. Dr. Stokes, there is testimony in the previous case against the Continental Assurance Company concerning your activities before you came to Florida and your operation of the sanatorium in Louisville, Kentucky—is that where you operated it?

A. Yes.

Q. I don't want you to go too much into detail concerning that, because the Court has before it the testimony which it will read, but I want you to tell me—

The Court:

Just a minute, Mr. Anderson. Are you going to have an addition to his testimony before, or are we only going to use that for rebuttal? I thought we were—

Mr. Anderson:

I would rather have you read it.

The Court:

You can't keep me from reading it, if I want; but are you going to have it part of the record?

Mr. Anderson:

I don't want to have to go into all that again. I think it will save a lot of time if you do. I just want to supplement it.

The Court:

I think we should be careful, if there is going to be an appeal in this case by either side, that you make a complete record as to the injury and policy and such.

Mr. Anderson:

Oh, I will be careful.

The Court:

Be careful how much you exclude. I thought maybe you had better put it all in, or be sure you get his other testimony in.

Mr. Anderson:

Judge, if we may, I would like to agree that the Court may consider Doctor Stokes' testimony in the previous case supplemented by what I am going to put on here. That is, I have no objection in the interest of saving the time of the Court.

Mr. Carey:

In that case I think he would not testify to anything except new matter.

The Court:

Oh, I don't know, now. You have got me. I won't know the difference. I will have to leave it up pretty much to counsel, that there may be duplications and overlappping to do it this way. I didn't think that is what he was going to do. It may save time to do it the way Mr. Anderson suggests, and if there is no serious objection let it all go in.

Mr. Dixon:

I have no objection.

The Court:

All right, go ahead. You have got his previous record in. Put in as little as you can in overlapping as possible.

(By Mr. Anderson):

Q. Doctor Stokes, do you know approximately the time that you ceased to operate the Stokes Sanatorium in Louisville?

A. It was sometime in April, 1951.

Q. What did you do following the closing of the hospital?

A. Following the closing of the hospital, I had to wind up all the affairs of the hospital, and for that reason I didn't get down to Florida until about 1952.

Q. Now, had you made any plans to come to Florida at the time that you closed your sanatorium in Louisville?

A. I had made plans several years before.

Q. What did you intend to do in Florida when you arrived here?

A. I intended to practice mental hygiene.

Q. That was the profession that you were engaged in practicing in Louisville when you ran the sanatorium, wasn't it?

A. No. I was a psychiatrist, but a psychiatrist is acceptable.

Q. Well, it is an allied field?

A. Well, I mean, they want psychiatrists in mental hygiene work.

Q. Now, in February of 1952 you started out from Louisville, Kentucky, to Fort Lauderdale, Florida; is that right?

A. Yes.

Q. And on the way you were involved in an automobile accident that you previously testified about in the case against the Continental Assurance Company; is that right?

A. In brief, yes.

Q. Is there anything to your testimony in that case that you wish to add here, that is not reflected by the record in the Continental Assurance case—any facts concerning the accident?

A. I am not sure whether I told them that I was knocked unconscious and woke up in the bottom of a canal.

Q. All right, if you want to testify to that, suppose then you tell the Court what happened when you had the accident and the few events that followed that, so that he will be more oriented with the case.

A. I turned over three times, as I remember, and—

Q. Where was this?

A. This was somewhere beyond Clewiston, Florida. I turned over three times, as I remember, and I woke up in the bottom of a canal filled with water. I thought at that time that I was laying in the bottom of the car, and that I would never survive. And I said to myself in my subconscious mind, "God help me, God help me, God help me." And I rose up, and much to my surprise the water was only to my shoulders, and I walked out. And the car was so demolished that it cost about 1100 or $1200 to fix it. They had to put a whole new top on it, and three or four fenders.

Q. All right, now, tell the Judge briefly what happened after this accident, what you did.

A. After the accident I walked to the bank, and much to my surprise a man came up and said, "Is there anything I can do for you?" And in a short time another man came up and says, "Is there anything I can do for you?" And those men took charge of me and collected all my luggage, which was thrown—and everything was thrown out of the car and strewn about 50 or 75 feet along the canal They called the police. I was bleeding

at that time on my forehead and finger. And as I remember, the fellow said, "This is the first time in my life I have ever had a chance to treat a doctor, but I haven't any iodine or medicine to do it with."

And these men called the police, and after the police came I tried to get their names. I offered them money. I thanked them for what they had done for me, but they wouldn't accept anything. They wouldn't give me their names, and I couldn't find out who they were. I thought maybe—

Q. Go on, now, and tell us what happened to you. The Judge isn't interested in these things.

A. Well, I walked out of the canal and they picked me up, and they took me to the Clewiston Inn.

Q. Were you treated by a physician in Clewiston?

A. No, no.

Q. Did you go to a hospital in Clewiston?

A. No. I was taken to the Clewiston Inn, and I walked in the lobby. All my clothes were wringing wet, and the policeman had given me a raincoat or something to put over me. And I asked them at Clewiston Inn if they had a room. They said, "Yes, we have just one room left." And I went to my room, and fortunately one of my suitcases that had been on the edge of the water was not wet inside; and I began treating myself with penicillin, because of the fact I thought maybe I might have some injury internally and I wanted to prevent any infection from taking place. And I didn't want to bother any doctor that night, because doctors won't charge doctors. And it is awfully embarrassing. I wish they would. I wish they would make a law.

And the next morning I went over to the doctor's office, and the nurse said that the doctor wasn't in but she would take me over to the hospital, which it was probably six to ten blocks from the hospital. I don't

know exactly, because I don't remember. And she took me over in her car, and the doctor examined me; and I was black and blue all across my abdomen—even my scrotum was black and blue, and even down to the bottom of my penis. And I had a contused—I guess—area, or abrased area, where the wheel hit me, about the size of a dollar, on this same forehead. I don't know whether you can see it or not there (indicating). For a long time afterward you could see that. And I had a little hematoma on my abdomen, and he said, "If that clots it is liable to kill you." So he took a syringe and drew the blood out of that; and he told me to go back to the Clewiston Inn and stay there, and he would come to see me.

But I didn't do that. I came on to Fort Lauderdale, because there was only one or two doctors in Clewiston, and I wanted to get some place in case my condition got worse, which generally happens within 72 hours, so that I could acquire adequate medical attention. And I came on to Fort Lauderdale and went to my home. And as I recall, the second night I was there I woke up about 1 o'clock in the morning with this extreme pain in my left ankle, and I knew I must have a thrombus or embolus, and I thought I was going to die. And I called a taxicab and I went to the Broward General Hospital, and there was—no, first I called them by phone and I asked them if they would accept me. I said, "I am a physician; will you accept me?" They said, "Well, we don't know whether we will or not, but there is a physician over here now taking care of an accident case—"

Mr. Dixon:

Judge, may I interrupt a moment? This has all been covered in the previous trial.

The Court:
What is your objection particularly?

Mr. Dixon:
Based upon my understanding of the agreement entered into that we were not going to duplicate things at the other trial. Doctor Stokes has added nothing to his testimony at the previous trial.

The Court:
I don't know what is in it, but, Mr. Anderson, you are familiar with it. Are these thing covered?

Mr. Anderson:
Well, largely they are, Your Honor.

The Court:
Certainly, much of what he is telling is of minor importance—

Mr. Anderson:
I agree with you.

The Court:
—but it might be well if you would supervise it a little closer. All right.

(By Mr. Anderson):
Q. You were treated by what doctor at the Broward General Hospital?
A. Well, I remember Doctor Taylor's name, but I can't remember the other doctor's name in Hollywood. There was another doctor at Hollywood that asked me if I had a doctor, and I said, "I don't know any doctors in Fort Lauderdale. You just call whoever you want to."

Q. All right, Doctor Stokes, what was your general physical condition prior to the time when you had this accident?

A. Well, prior to the time I had this accident I considered myself in good enough physical condition to come down here and see about getting employment.

Q. Were you able to conduct the practice of medicine which you were engaged in, or had been engaged in, rather?

A. Well, I think the best answer to that is this, that the last three or three-and-a-half months approximately that I was in the practice of medicine I made a nice profit from my business, and hadn't I been mentally capable of operating I couldn't have been a successful practicing physician.

The Court:

Doctor, that is a little bit vague from the question. The question was, when you came down here—I don't know when you last practiced medicine—but when you came down here, were you in a position from a physical standpoint to practice medicine successfully?

The Witness:

Yes.

(By Mr. Anderson):

Q. Now, what was your physical condition following the automobile accident?

A. Well, my physical condition following the automobile accident was one in which there was no question of doubt but that I had a concussion, because I lost conciousness during the accident. And I had multiple contusions—oh, I was just bruised over, and the worst massive bruises was in my abdomen where the doctor said I had two large hematomas about three inches long.

Q. You have been over that. Now, were you able to pursue any occupation for some time following your accident?

A. No.

Q. Why not?

A. Well, I was having headaches. I was so exhausted that I would go to bed at 8 o'clock at night and sleep until 11 or 12 o'clock the next day. I had dizzy spells. I was extremely nervous. And all I wanted to do was lay around. I couldn't read the paper. Nothing seemed to interest me. Food didn't taste right to me. And there was a lot of other things that I just can't remember right now.

Q. How long did this condition that you have just described continue to exist?

A. Well, this condition has continued to exist to the present time, except that it is not as bad as it was for the first year or two after the accident.

Q. Well, what symptoms are you suffering from now that would affect your ability to pursue the practice of medicine or in any other gainful occupation?

A. If I write a letter, or I try to do anything relative to this insurance case, I get terrible headaches. I get a stiffness in my neck every time I turn my head. The symptoms of the accident—my heel being injured comes back on me if I walk much. My left ankle begins to pain me if I walk much. I begin to have dizzy spells again. If I don't take these vasodilators—which I took one just a little while ago to clear me up—I am confused and can't think clearly. If I write a letter, I leave out words, or I leave out letters. Or sometimes I get so bad they don't even make sense. But that is only when I am in this state of confusion. As long as I take enough vasodilators, I am fairly clear. But I can't take a lot of vasodilators, any more than I have to, because I realize

that if I take the vasodilators and my system becomes accustomed to them, and eventually then they fail me, then I am gone. So I try to take the minimum amount of those, and only when I have to. But I have to take them daily. But the amount of them depends upon how much tension I am under or how much I am upset.

Q. Well, now, since your accident have you been able to do any work of any kind?

A. No.

Q. Are you able to do any work now, at the present time?

A. No.

Mr. Anderson:

That is all.

The Court:

All right, Mr. Carey, suppose you lead off for the defense here.

Cross Examination #1.

(By Mr. Carey):

Q. Doctor, you sold your sanatorium in 1950, did you not, sir?

A. Well, I had an agreement to sell it in 1950, but it wasn't consummated until in 1951. In other words, it could have fell through and I wouldn't have sold it at all. It was one of those kind of—I don't know what you call it. I mean, if everybody agreed it was on the board they would take it. You see what I mean?

Q. You didn't operate the business in 1950, did you?

A. I operated it all in 1950, and I operated it until sometime either the middle, or sometime in April, 1951.

Q. Now, it was in 1951 when you came to Florida, wasn't it?

A. No. I came to Florida in February of 1952.

The Court:

Are you talking about the same trip? February of '52 was when this accident occurred?

The Witness:

That's right. I was on my way to Florida to see Richard T. Gallion, who can verify the facts that he offered me a position, because I have a—

The Court:

No—all I want to know is, you seem to be in disagreement as to when you came to Fort Lauderdale. Did you come to Florida previous to February, 1952?

The Witness:

Oh, my son has been an asthmatic, and I have been coming to Florida since 1936.

The Court:

You evidently did, because you said you went to your home in Fort Lauderdale. Did you live down here?

The Witness:

I bought a home in Fort Lauderdale on account of my asthmatic son either in '37 or '38, and I have had a home down here ever since. And my son and my wife, taking care of my asthmatic boy, have lived down here during that period. Do you see what I mean?

The Court:

Let Mr. Carey develop it. I don't know how material this is. You go ahead.

(By Mr. Carey):

Q. Now, you operated this sanatorium for many years in Louisville, did you not?

A. Approximately 27 years.

Q. You inherited that business from your father; is that correct?

A. Yes. He operated it for 20 years. It dealt with psychiatric cases. I was thoroughly familiar with all types of psychiatric cases.

The Court:

Doctor, just answer the question. Go ahead.

(By Mr. Carey):

Q. You entered into an agreement to sell the sanatorium in 1950; is that correct?

A. That's right.

Q. And you came down to Florida in 1951; isn't that correct, sir?

A. No. I came down to Florida in February, 1952, when I had the accident.

Q. When you testified at the last trial, Doctor—I am referring to Page 102, Counsel—didn't you say, and I quote: "Well, I came down to Florida in 1951 after I sold my hospital. I don't remember when that was at this time, but I came down at that time and to establish my residence here"?

A. I may have done that, but I had forgotten it.

Q. That is a fact, isn't it, sir?

A. I believe I did come down in 1951 to establish a residence here, because I understood that I had to be here a year before I could take the State Board.

Q. And you had real estate, vacant real estate, down here which you had bought in the 30's for later development, did you not, sir?

A. No, no. If I said that, I think I was wrong. I bought it in the 40's.

Q. In the 40's?

A. Yes, around 1940, somewhere around '40 or '41 or '42. I don't remember exactly.

Q. That was some acreage property, was it?

A. No, I did not buy any acreage property. I bought some property with the idea of coming down here and developing it. But on account of being totally disabled, I realized I could not develop it.

Q. Now, just try to answer the question, if you will.

A. So I have not tried to develop it.

Q. You did buy some property, real property, down in Florida?

A. Frontage, yes.

Q. That was, you think, in the 40's; is that correct, sir?

A. I couldn't say exactly. Sometime between '40, '41, '42, and '43. I couldn't say exactly.

Q. Now that I have refreshed your recollection, isn't it true that you sold the sanatarium in 1950 and that you came down to Florida to make your permanent home here in 1951?

A. No. I had a preliminary agreement in 1950. I might have been a little confused when I gave this last testimony, but I am sure I am right on what I am saying now. And the deal wasn't consummated until sometime, as I remember, in February, 1951, and they told me at that time that I could stay there as long as I wanted to.

Q. Let's try to make it as brief as we can. So you sold it in 1951, February of '51, and consummated the deal in '51. It was right after that that you came down to Florida, wasn't it, to make your home here as a permanent thing?

A. Well, after I moved out of the institution I established a residence there and an office in one of my apartment houses.

Q. All I am asking you, Doctor, if you will try to answer the question—

The Court:

Can you answer him?

A. It took several months for me to do that, and then I came to Florida. See what I mean? So I must have come to Florida—I don't remember exactly—sometime between the first of June and first of September. I don't recall the exact month.

Q. In 1951?

A. Right.

Q. To establish a residence?

A. Right.

Q. Then you went back to Louisville?

A. To wind up the institutional affairs that I hadn't completed, which had to be wound up for the C.P.A.

Q. Just confine your answers, if you will, to the questions that are asked. Now, you never did apply for a license to practice medicine in Florida, did you, sir?

A. I did not, because I understood you had to have a year's residence before you could apply. And I thought maybe being working for the State I would get out of that, so I was working that angle if I possibly could.

Q. Is your answer, "No, sir," that you never did apply?

A. No. My answer is absolutely no.

Q. All right. And you weren't, of course, admitted to practice in Florida before at any time, were you, sir?

A. No.

Q. Now, you were at the time having trouble with your wife, too, were you not, sir?

A. No. My trouble began with my wife sometime around the first of the year of 1952.

Mr. Anderson:

Your Honor, I think that is immaterial. Besides there is something in the record of the other case about it, which I can't object to, but I don't see any reason to go into it.

The Court:

If you are going to put in the record of a case I have never read, his right of cross-examination is going to be rather vague to me. Is there something in there about his troubles with his wife?

Mr. Anderson:

Oh, yes.

The Court:

Go ahead. It won't hurt too much. If it is a waste of time, I don't want to hear it. But if it is relevant to the case—

(By Mr. Carey):

Q. And at the time, sir—

A. I was—

The Court:

Just answer the questions, Doctor.

Q. Just a minute. And at the time, sir, you were also going through the climateric, the male menopause?

A. I had gone through the climateric in '47 and '49, but it had been getting better.

Q. All right, sir. And naturally, that condition together with the condition that you were having with your wife, and together with your business, was somewhat of an upsetting and nervous condition which resulted, was it not?

A. Will you let me explain it?

Q. Well, I think that is capable of an answer.

The Court:

Can you answer yes or no, Doctor?

The Witness:

Well, the trouble is, what he is saying shows that he doesn't understand the situation. How can I answer something yes or no?

Mr. Anderson:

Will the Court explain to him that he can answer the question and then give his explanation?

The Court:

That I want to instruct you. You know what counsel is talking about. Will you answer that question yes or no, and then give your explanation if you so desire?

The Witness:

Will you repeat the question, please?

(The reporter read the preceding question.)

The Court:

Can't that be answered yes or no?

A. No.

(By Mr. Carey):

Q. Why did you sell the business, then, in Louisville, Kentucky?

A. May I explain something to you that you don't know?

Q. I am just asking you why you sold the business in Louisville. Wasn't it that you were retiring and that you were fed up with the practice as such, and you were about to give it up?

A. No, it was not at all. I sold the business in Louisville principally because my wife wanted to live in Florida, if you want to know the truth of the situation. And I didn't want to sell it. I hated to give up the business.

Q. Shortly after the night of the accident when it happened you didn't see any doctor at all, did you?

A. No, I didn't. And I didn't sleep that night.

Q. Just a moment. And the next morning you did find a doctor's office, and the nurse took you over to the hospital; right?

A. Yes.

Q. Now, the hospital didn't even admit you there, did they, as a patient, or even as an out patient?

A. No.

Q. And you didn't go to any other hospital then until several days later when you went to the North Broward Hospital; is that correct, sir?

A. Yes.

Q. And when you went to the North Broward Hospital, sir, didn't you give them as your occupation, and I quote from the hospital record, the occupation of "retired physician"?

A. I did not. I don't know how that got on there. Because at that time I was too sick to sign anything or see anything. And I don't know whether you know how

hospitals operate. You sign something and they fill it in there.

Q. Just answer the question. Now, when you went to the hospital, sir, did you make any complaint whatsoever about any injury to your head—at the hospital at North Broward?

A. My main interest at that time was this extreme pain in my left ankle.

Q. Will you answer my question, please? Did you—

A. No.

Q. All right.

A. Not at that time.

Q. All right. And you have seen the record of the North Broward Hospital, have you not, sir?

Mr. Anderson:

If the Court please, I think that these questions are argumentative and are asking the witness for matters that are immaterial and irrelevant. If they are in evidence, they speak for themselves. If they are not in evidence, then they are plainly at fault.

The Court:

Again, Mr. Anderson, I think they are relevant. The difficulty is whether or not they are in evidence, and if you admit they are in evidence, then he has a right to again cross-examine. I wouldn't have stopped you; you could have put on the whole business.

Mr. Anderson:

I agree, Judge, but I think the question is argumentative.

The Court:

I know Mr. Carey is not anxious to stay here longer than necessary, and he must have some purpose in it. I will overrule the objection and let him proceed to question him concerning that document that he has there (indicating). Is that in evidence?

Mr. Carey:

Yes, sir.

The Court:

All right.

(By Mr. Carey):

Q. Isn't it a fact, sir, that the admitting diagnosis was phlebitis of the left leg, and the discharge diagnosis was phlebitis of the left leg and contusions and hematoma of the scrotum and penis?

A. I don't remember. I never saw that, you know (indicating).

Q. Isn't it a fact, sir, that you told the nurse that you were "in an accident Tuesday" and injured your leg?

A. I don't know what I told her.

Q. At any rate, you made no mention at the North Broward Hospital, where you were a patient from February 29, 1952, to March 5, 1952, and incidentally, were admitted ambulatory and discharged ambulatory—you made no mention at that hospital during that stay of any injury to your head?

A. Why sure. When the doctor came in to see me, I told him about it. He examined me. You couldn't help but see it. I had all skinned and a great big bruise on the left side of my head where the—what do you call it—the steering wheel hit me.

Q. What doctor was that, sir?

A. It was a doctor from Hollywood. I don't remember his name.

Q. You don't recall his name?

A. No. I know he was from Hollywood.

Q. Now, sir, you had a firm name or business name at Fort Lauderdale, which I believe was C-o-l-e-e, Colee-Hammock Real Estate Company, did you not, sir?

A. No. I had a name that I—about two or three years before I came down here—I established at the Court House for bank purposes, the name of the Colee-Hammock Realty Company, thinking when I came down here, that if somebody would buy a piece of property from me that I could make a profit at, or sell a piece of property for me that I could make a profit at, it would give me a little more prestige. But I never have dealt in it, and after you objected to it last time I went out and cut out the telephone number to please you.

Q. It was listed then as a business name of yours in the phone book, was it not?

A. Yes; but it wasn't listed the first few years after my accident, because at that time—at that time I had a number that wasn't to be given to anybody, because I didn't want to be worried by anybody. But my wife had to have some way of her friends getting in touch with me, so I put this name in there, and I thought by doing that, that would give me something to pass the time away; because they send me literature. But you can't prove that I have sold or bought one piece of real estate or made any profit on it since I have been totally disabled. And that, I think, is the main issue.

Q. Now, Doctor, do you recall signing—and I will show you now Defendant's Exhibit 3 which was admitted in the previous case—is that your signature at the foot of the instrument?

A. Now, you showed me this before—but you wouldn't let me comment on it, and it says in there that I am resting from practicing medicine. But you don't bring that in the question.

The Court:

Doctor, just a moment. Regardless of what happened at any other time or any other place, right now the rules of evidence are going to apply. Counsel has asked you if that is your signature on a document. You are required to answer. Inspect it, take your time, and answer yes or no, and that is all.

A. Yes. Yes. But he won't let me examine the document and comment on it.

Mr. Carey:

Just a minute.

The Court:

Is that your signature on there; can you look and see?

The Witness:

That's right, that is my signature.

The Court:

All right.

The Witness:

Can I examine it? Can I comment on it?

Mr. Anderson:

No, you may not.

The Court:

I don't know. What do you want to comment about on it?

The Witness:

What I want to comment on here, it says definitely I am resting from the practice of medicine; which I was doing.

The Court:

Listen to your counsel. I don't know what you are doing, and you don't probably, either; but let him take care of your case for you.

Mr. Anderson:

Yes. If Your Honor please, Doctor Stokes is not hundred percent well. He can't control his Courtroom manners. He doesn't mean anything offensive to the Court. I want the Court to please bear with him in it. It is just an unfortunate condition.

The Court:

Mr. Anderson, I am entirely aware of the difficulties that counsel have. The case is going along all right. All I want is that it not get out of hand. You help to see that it doesn't. Go ahead.

Mr. Carey:

I want to explain my purpose in asking him to identify this. It shows his occupation "real estate", and then— I have difficulty reading it—"resting from—"

The Court:

Let me see it. It might be quicker.

Mr. Carey:

Yes, sir. (handing document to Court)

(Document examined by the Court)

The Witness:

May I see the date on that?

The Court:

I didn't understand where this paper came from. Is this from the hospital record, or what is it?

Mr. Carey:

Your Honor, that requires a little explanation. In the previous trial which was before a jury—

The Court:

It is Defendant's Exhibit 3 in the other case. Now, it is an authorization to any hospital or physician, but where did you get it?

Mr. Carey:

Let me explain it, please. In the previous trial it was brought out that there were other insurance companies, and from the standpoint of the jury Judge Choate thought it well to keep that from the jury. That, I believe, is Defendant's Exhibit 3, and it was agreed that the top of the form be cut off and marked by the Clerk, which I now hand Your Honor, as the other portion of the same exhibit which bore the name of Continental Casualty Company, which was not a defendant in the previous suit.

The Court:

All I want to know, this was sent to one of the insurance companies?

Mr. Carey:

Yes, sir.

The Court:
I thought possibly it was something in the hospital file.

Mr. Carey:
May I add the top of the exhibit inasmuch as it will complete the exhibit at this time?

Mr. Anderson:
These were both admitted in evidence in the Continental Assurance case?

Mr. Carey:
Yes. You see, this was cut off the top in order to keep that portion from the jury. May I ask that these now be stapled, the top of Defendant's Exhibit 3 to the bottom, as this does apply to Continental Casualty?

The Court:
Is that in evidence, also?

Mr. Carey:
Yes, sir.

The Court:
All right, put it in. It might help to know where it came in.

Mr. Carey:
If you will staple this together, please, and leave those two notes attached.

(Whereupon, said portion was attached to Defendant's Exhibit No. 3 admitted in the previous related case, Edgar W. Stokes v. Continental Assurance Company.)

(By Mr. Carey):

Q. Now, sir, that conversation that you had about a job with Commissioner Gallion in Fort Lauderdale was in 1950, wasn't it?

A. Yes, I believe so.

Q. And you hadn't done anything, of course, between 1950 and subsequent to apply for admission to practice medicine in the State of Florida, had you?

A. No; because he did not tell me definitely that that position would be available. He said he thought it would be available in two years. And I didn't know whether I was going to come down here and practice mental hygiene, whether I was going to do psychiatric work, or whether I was going to head up some other psychiatric institution.

Q. And that is the only application for employment or the only work that you sought from 1950 on; isn't that true, Doctor?

A. I was practicing medicine all that period.

Q. Well, the expression of the matter that you are talking about occurred at a conversation in 1950 in which he thought by 1952 that there might be a position available in mental hygiene; isn't that correct, Doctor?

A. May I tell you one thing?

Q. I just asked you a question. Just try to answer it.

A. I don't recall it. If you will—

Q. For the purpose of the record, I refer to Page 103 of the previous testimony.

A. You will have to repeat it for me.

Q. Now, Doctor, did you have any earnings in 1950?

A. The Internal Revenue report will show that my sanatorium was in operation and paid, and in 1951 it will show that my sanitorium was in operation and paid.

Q. Well, you didn't work at the sanatarium in 1951 did you, sir?

A. I worked there till about the middle of April when I moved out, and from then on I took care of winding up the things that had to do with closing the institution.

Q. Now, do I understand that it is your position, sir, that your health was excellent prior to the time of this accident, so that from a health standpoint you would have been able to engage in the practice of medicine were it not for this accident?

A. I had been suffering since 1945 with angina pectoris, but that did not prevent me from practicing medicine.

Q. Now, was Doctor Woodford Troutman in Louisville your doctor in connection with the alleged angina pectoris?

A. The first doctor that examined me was Doctor Weiss in 1945. And I had my coronary in 1946 and I treated myself. Because I don't know whether you know it or not, but after you have coronary attack—

Q. Just a minute, Doctor. We are not asking you for a dissertation on coronary—

The Court:

He just asked you who was your doctor, your regular doctor, I believe the question was.

(By Mr. Carey):

Q. Didn't you see Doctor Woodford Troutman, the eminent heart specialist?

A. I saw him in 1946.

Q. You also saw him in 1947?

A. In 1947.

Q. And again in 1954?

A. In 1948.

Q. And isn't it a fact that Doctor Woodford Troutman told you that there was nothing wrong with your heart?

A. What happened in 1954—

The Court:

Can you answer that question? That is a simple question, yes or no; can you answer that?

A. No, no, no; he did not see—

The Court:

He did not tell you?

The Witness:

He did not tell me there wasn't anything wrong with my heart. He told me when he took an electrocardiogram that the electrocardiogram didn't show any thing and was approximately normal. But he didn't say there wasn't anything wrong with my heart, because he gave me medical advice about my heart.

Q. And he is an outstanding heart specialist in that area, is he not, sir?

A. I think he is one of the best. —Does he work for the insurance companies, may I ask?

Mr. Carey:

I wish the Court to strike that part of the response. I might say to the Court that he does not, as far as I am concerned.

The Court:

It doesn't make any difference. I just heard the remark is all.

Mr. Carey:

And I would gladly go under oath on that, if necessary.

The Court:

You all seem to be in agreement that he is an eminently qualified man. That is all that there is to it. Go ahead.

(By Mr. Carey):

Q. Now, can you tell me, sir, since 1952, since the hospitalization at North Broward Hospital from which you were discharged on March 5, 1952, and then your being a patient in that same hospital in 1954, did you see any doctors between those two hospitalizations?

A. Yes.

Q. And how frequently did you see any doctors?

A. I just can't answer that accurately, because I don't remember.

Q. How often have you seen a doctor since the hospitalization which ended on June 5, 1954?

A. I remember that after I left Doctor Taylor in 1952 that I went to Doctor Frank Strickler. And he examined me and rendered a report, I understand, to the insurance company.

Q. I didn't ask you that, sir. I asked you how often have you been to a doctor since June of 1954?

A. Well, now, when I don't remember things, how can I tell you?

Q. All right, is that your answer, that you do not remember?

A. That's right.

Q. When is the last time that you have seen a doctor?

A. The last time I saw a doctor was--I saw Doctor Dornberger this morning and had him give me a letter here (indicating). And I saw Doctor Keedy yesterday and gave him this record of my symptoms.

Q. Prior to yesterday, then, when was the last time that you saw a doctor?

A. Well, prior to yesterday I saw Doctor Dornberger before he went on his vacation.

Q. And when was that, sir?

A. I think he was gone during August.

Q. And you saw him once; about when was that?

A. Well, I am not sure, but I think since this trial he has made several electrocardiograms on me due to periods of cardiac--

Q. I am just asking you when you saw him the last time?

A. Well, t told you the last time I saw him was sometime in July before he went on his vacation.

The Court:

I didn't hear the July. It was July, this year; is that it?

The Witness:

July; yes, sir. I didn't remember whether I said it or not.

(By Mr. Carey):

Q. When was the last time prior to that date that you saw any doctor?

A. Well, I have been going to see Doctor Dornberger ever since the last trial. I don't remember how often or when.

Q. You are unable to tell us, then?

A. No, I can't remember that.

Mr. Carey:

I believe that is all I have at this time.

The Court:

All right, Mr Dixon.

Mr. Dixon:

Your Honor, as I understand, we are trying these two cases in consolidated form, and I don't want to, on the part of the case involving the client I represent, retrace

all the steps Mr. Carey has just undertaken with the Doctor; so I would like for the record to show that Mr. Carey's cross-examination of Doctor Stokes shall be applicable to the case of Stokes v. Travelers Insurance Company, which is #5802.

The Court:

So as to be certain about it, let the record show that the defendant, Travelers, adopts the cross-examination of Mr. Carey. And you want a right to further supplement it?

Mr. Dixon:

Yes sir. I just have a few questions I want to ask, because I think Mr. Carey has covered most of the ground.

The Court:

All right.

Cross-Examination #2.

(By Mr. Dixon):

Q. Doctor Stokes, what property do you own now in Fort Lauderdale, in the Broward County area?

A. Well, I own several pieces of property

Q. Well, what type of property is it?

A. Well, here is the thing. I have always resented real estate, going into my business of personal affairs, and I don't think I have to answer that question.

Mr. Anderson:

Your Honor, I think it is immaterial and irrelevant what property he owns at this time.

The Witness:

They got me all upset and torn to pieces on my deposition on that stuff, and I don't intend to be tore to pieces again.

The Court:

Just a minute. What is the materiality? Are you trying to show something to the effect that he is in the real estate business?

Mr. Dixon:

Yes, sir. I am trying to show that he had at the time of this accident retired from the practice of medicine, and that it was his intention to live off the income from his properties, rental and otherwise, and from the sale and transactions of real estate business.

The Witness:

Your Honor—

Mr. Anderson:

Wait now. Don't say anything.

The Court:

I am handicapped again by the fact I don't know what was in the previous case about that. But I don't think it is going to be so embarrassing for you to be inquired about what kind of—

Mr. Dixon:

I am not going to ask him how much he makes or anything like that.

The Witness:

May I say that any real estate I have there is for sale by somebody else or leased by somebody else?

The Court:
All he wants to know and all this is about is your activities in the real estate business, if there was such. I don't know.

The Witness:
There is none.

The Court:
There is nothing to hurt you in answering it, and he wants—

The Witness:
Nothing in the real estate business.

The Court:
—and he wants to ask you concerning the setting or background or whatever it is of properties of your own—which I really believe you testified that you had some properties up there?

The Witness:
Judge, I have letters from the Travelers Insurance Company, themselves, that will answer all these questions, in photostatic form, by their own employees, if they will let me produce them. But they won't let me produce them.

The Court:
I can't go into that. The quickest and best—

Mr. Dixon:
I am not trying to harass Doctor Stokes.

The Court:

The quickest way is to let the counsel ask the questions. I will supervise the questioning. Now, if there was any objection—I don't think there was—if there was any, it is overruled, and you may proceed with that line of questioning. Go ahead.

(By Mr. Dixon):

Q. Just tell me what properties or type of properties you own in the Broward County area? I presume you own a home there; is that right?

A. Yes, I own a home.

Q. All right, what other properties do you own?

A. All the properties I own there are in my wife's and my name, owned jointly.

Q. What property do you and your wife own jointly?

A. Well, we own several pieces of property.

Q. What type of property is it? Is it rental property, unimproved—

A. We have one store that was leased ten years ago.

Q. All right. And is that lease still in effect?

A. Not ten years. I forget exactly. That lease, I mean, it has to run ten years. That lease is still in effect.

Q. Do you recall when that lease was entered into?

A. No, I don't. I don't recall.

Q. Was it before this accident?

A. That lease, original lease, was entered into before the accident.

Q. Has that lease been renewed since that time?

A. Yes. The lease has been renewed in this manner, that I told the widow of the deceased that if she could find someone, have her attorney get someone to renew the lease, that I would refund her $5400, which I didn't have to do. Because of the fact that she didn't have any money to carry on the business, and the business was

going to close up. But I told her, in fairness to her, that if she could get somebody else, her lawyer, to arrange another lease, that I would refund the $5400; and that was my only part in the lease.

Q. That was very fair of you. Now—

A. And the record will show that.

Q. —did that take place?

A. That took place.

Q. And you refunded her the money?

A. I refunded her the $5400, which I didn't have to do.

Q. You have a new tenant in there now, as I understand?

A. I have no new tenant. Her lawyer got a new tenant. I had nothing to do with it.

Q. Is there someone in the large store renting from you now?

A. There is a tenant in there that her lawyer got, made all the arrangements. I had nothing to do with it. They secured the tenant.

Q. When did this take place? Was that—

A. I don't remember.

Q. Was that before or after the accident?

A. It was after the accident, I think.

Q. Now, do you own any other rental property in the Broward County area?

A. No.

Q. Do you own any other—

A. And I have been accused because I own this one store; because you people have just absolutely harrassed me to death about it.

Q. Do you own any other property, unimproved property, in the Broward County area?

A. Yes, I own other unimproved property.

Q. Is that property listed for sale?

A. Yes, that's right. It is listed with a number of different companies for sale.

Q. That is listed with real estate brokers, is it?

A. Yes, that's right. I have nothing to do with it and want no part of it.

Q. What about Louisville, do you own any property up there?

A. Yes, I own some property up there. That is handled and supervised by an agent up there.

Q. What sort of property is that?

A. Rental property.

Q. What is it, a home or store building or apartment house, or what?

A. Apartment house.

Q. How many are there?

A. There is three buildings, I think.

Q. Three apartment buildings?

A. Yes, sir.

Q. And have those buildings been occupied continuously as long as you have owned them?

A. I don't remember that, whether they have been occupied continuously or not.

Q. You have an agent up there who represents you?

A. The agent takes care of it, sends me the check, and I have nothing to worry about.

Q. Do you own any other property in Louisville?

A. No; not since I sold the hospital.

Q. Now, sir, let me hand you a document here and ask you if you recognize your signature at the foot of that document?

A. Can I read the document?

Q. Yes, sir, you are perfectly at liberty to read it.

A. (Examines document) whose writing is this on here? This is not my writing (indicating). "February 26, '52, 7:00 p.m."—what does that mean?

Q. I don't have the faintest idea. —I think there was a change here. You had originally put March 4th

as the date of the accident. I think you then called them up and told them it was February 26th, and they made that change. If that is wrong—

A. That is not my writing. I don't remember anything about that. As a result of my accident, it shows I was confused. The accident was in February and wasn't in March.

Q. Except for the penciled notation—

A. This is my signature down here (indicating), if that is what you want, to know; yes, sir. But I can't find the date I signed it. What date did I sign it?

Q. Look right behind that (indicating). Is that your signature on that date?

A. On March 4, 1952, I signed it.

Q. Yes.

A. Now, how could I have the accident March 4th and sign it March the 4th? Huh?

Q. I don't know. I didn't ask you the question of that.

The Court:

You might identify it into this record. It has an exhibit number.

Mr. Dixon:

No, this is a new exhibit, a new piece of evidence.

The Witness:

Judge, may I ask a question?

The Court:

What is it you want to know?

The Witness:

Can they put into testimony proof that they have settled for the first six months, when I was in such a bad con-

dition and didn't know what I was signing or filling out? Can they put that into proof after they have already paid me for it and I have accepted payment for it?

Mr. Anderson:

Doctor Stokes, don't ask questions like that. It is embarrassing. We don't try cases like that.

The Witness:

How can I get anything that is settled?

The Court:

We will operate through this Court, Doctor. And I don't even know what the paper is You are trying to tell me what is in there when I don't even know if it is in evidence yet, see.

Mr. Dixon:

It is irregular for this to be done in this fashion. In order to save time, I merely want to mark it for identification. If counsel has no objection, I will put it in as an exhibit.

Mr. Anderson:

I thought you were offering it in evidence.

Mr. Dixon:

I will offer it at this time, if there is no objection.

Mr. Anderson:

I want to ask him a question.

(By Mr. Anderson):

Q. Is the rest of this document in your handwriting?

A. No.

Q. The only thing on there that is in your handwriting is your signature?

A. Oh, no, no. This is my handwriting up here (indicating).

Q. We can't understand that.

A. Now, February 26th, that date, and this about the phone number and all, is not in my handwriting (indicating).

Q. So I can get the record straight, is everything on the document in the box on the lined side of the page in your handwriting with the exception of the penciled notation?

A. And the top penciled notation is not mine.

Q. But the ink—

A. The ink is mine; yes.

Mr. Anderson:

All right. Well, I have no objection to it.

The Court:

Now, this is the only hearing we hope to have for the purpose of taking the testimony and introducing evidence. Are you trying to offer that in evidence now, although it is out of turn?

Mr. Dixon:

I had only intended to have it identified; but if counsel has no objection, and to save time, I would like to offer it as Defendant's Traveler's exhibit.

The Court:

If he has no objection and you want to let it be done that way, at one time, see—

Mr. Dixon:

I will offer it out of order, if you have no objection.

Mr. Anderson:

I have no objection to it since he has established it; but I reserve the right to ask the witness some questions about it when I get back on.

The Court:

Oh, yes. All right, let it be introduced in evidence, on behalf of the defendant, Travelers.

(Document above identified was thereupon received in evidence and marked Defendant Travelers' Exhibit No. 1.)

(By Mr. Dixon):

Q. All right, now, sir, do you recognize your signature on this piece of paper (handing)?

A. May I look at it?

Q. Yes, sir.

A. Now, the penciling in here is not my signature and the rest of the writing is not my signature. Now, how could that happen?

Q. Well, let me ask you if this is your signature (indicating)? That is the only question I asked. Is that your signature?

A. This is my signature (indicating); yes, sir.

Q. Is that date immediately beneath it in your handwriting?

A. The date is in my handwriting; correct.

Q. All right, do you recall the circumstances under which this document was made out?

A. I don't even remember this document.

Q. All right.

A. Why would somebody else fill it in and have me sign it? "Witness, Kenneth Holme"—I don't understand that.

Mr. Dixon:

I would like to have this marked as an exhibit for identification, and if you have no objection, put it in evidence.

Mr. Anderson:

Let it be marked for identification only.

The Court:

Let this be marked just for identification.

(Document above identified was thereupon marked Defendant Travelers' Exhibit No. 2 for Identification.)

(By Mr. Dixon):

Q. Now, Doctor Stokes, do you remember filing or sending to the Travelers Insurance Company any exhibits or any documents such as these that I have shown to you? Do you remember the physical act of signing these?

A. To tell you the truth, I don't remember any of it, no.

Q. All right, do you recall that you did make such statements?

A. I don't even recall it.

Mr. Dixon:

You don't recall. I think that is all.

The Court:

You may now proceed with re-direct, Mr. Anderson.

Mr. Anderson:

I will be through in just a minute, Judge.

Re-Direct Examination.

(By Mr. Anderson):

Q. Doctor, I hand you Defendant Travelers' Exhibit 1, and ask you if you recall the circumstances under which you made out that proof of claim?

A. No.

Q. Do you recall where you were when you did it?

A. No, I don't.

Q. Did you sustain any other injuries as a result of your accident that are not set forth in the proof of claim?

A. Let's see—

Mr. Dixon:

Your Honor, I think that calls for a medical conclusion on the part of the witness, and I object to it.

Mr. Anderson:

He is a doctor.

The Witness:

I see I have got "concussion" on here. I must have thought of that.

The Court:

Was that a question on the paper?

Mr. Anderson:

That is the question I asked him, whether that was a complete statement or not, or whether some other injuries he sustained were not on there.

The Witness:

When I sent that in, dated March 4th, I put "concussion" on there.

The Court:

That is a good question. Objection overruled.

Mr. Dixon:

Your Honor, am I to understand he is testifying as an expert medical witness?

The Witness:

No, I am not an expert.

The Court:

No. He is testifying—let me see, is this a statement—

Mr. Dixon:

He asked him the question, did he have any other injuries other than those listed on the paper, and I don't think he can answer that unless he is qualified as an expert medical witness.

Mr. Anderson:

I think he can testify. Anybody can testify.

The Court:

Oh, the rule is different with regard to talking about your own injuries, isn't it?

Mr. Anderson:
Yes, sir.

The Court:
He knows whether he had a pain in a portion of his body or some thing.

Mr. Dixon:
I don't think the Court would permit me in a case to get up and testify that I had suffered a concussion of the brain and a ruptured spleen, or something of that sort.

The Witness:
Not even if you were a physician?

The Court:
I would say that he could testify as to the particular question, did he have any injuries. When he gets to describing—well, I don't know the rule with regard to this. This is a situation where a medical doctor is testifying as to his own troubles.

Mr. Dixon:
I am perfectly willing to let him testify as a medical doctor, provided that he takes the position that he is qualified to give such testimony.

The Court:
Well, just going into that, for instance, Mr. Dixon, is there going to be any question that this doctor here could not qualify as a medical expert?

Mr. Dixon:
Well, I would like to have a ruling on that before he goes ahead and testifies. If he is testifying as a layman

or as a person with no medical knowledge, that is one thing. If he is testifying on the basis that he is making a self-diagnosis of his own case, and is willing to admit that he is capable of doing that, then I have no objection to his doing so.

Mr. Anderson:
I am not going to pursue it any further, Judge.

The Court:
What is that?

Mr. Anderson:
I am not going to pursue it further.

The Court:
It is a hard question to answer. I can't even read the writing. I don't know what would be an addition, what would be a subtraction. I can't read that. (Indicating)

The Witness:
I will read it for you, if you want to make a record of it. If the insurance company man wants me to read it, I will read it.

The Court:
It is only fair to permit you to read it, if your counsel authorizes it.

The Witness:
I can see "concussion" on there.

Mr. Anderson:
Read what the Defendant Travelers' Exhibit No. 1 says with respect to the description of the injuries sus-

tained on that exhibit. —And I might add that they asked him to describe them, and—

The Court:

All I want you to do is read that, but don't interpolate, add to it, or anything.

The Witness:

You mean, begin with—read the whole document, or what?

Mr. Anderson:

Could he just read this one question right there, "Describe the injuries"? That is all I asked him.

The Court:

"Describe the injuries sustained." It looks to me like the "thrombus" or something "of the left leg".

The Witness:

Nobody can read a doctor's writing. I know that.

The Court:

Maybe you had better read it. Just read this (indicating). Don't add anything to that.

The Witness:

"Describe the injuries sustained: Thrombus, left left"—I put "left" twice here—"leg." "Two thrombi in lower abdomen. Concussion. Bruises over left arm, over lower abdomen," and so forth.

Mr. Anderson:

Is that all it said?

The Witness:
I can't hardly read it, myself.

Mr. Anderson:
I have no further questions on that.

The Court:
Let me look at that, Mr. Anderson.

Mr. Anderson:
May I go ahead and examine him, or shall I wait until you finish reading it?

The Court:
All right.

(By Mr. Anderson):
Q. Doctor, what was your income from the hospital for the year 1950?
A. I don't remember, but it went into probably somewheres around 20—or $30,000.
Q. It wasn't that much, of course, in 1951, the year you sold it?
A. No. It was probably about 10 or 12 thousand in 1951.
Q. Now, when the Court convened today to take the testimony in this case, you heard me enter into a stipulation for the trial of the case by permitting the Court to consider the record on the case that was tried before?
A. No, I don't remember that. You will have to repeat it.
Q. Did you hear what I said to the judge?
A. I heard what you said, but I can't remember it.
Q. I didn't ask you if you could remember it, Doctor. What I want to ask you is, if the agreement that I entered into for the trial of this matter before Judge Lieb today

was in accordance with your consent that you gave me two or three days ago, that we would try the case on that record plus what testimony you were permitted to supplement with today; did you agree to that?

A. I guess I did.

Q. Well, as a matter of fact, did you?

A. I just can't remember things accurately, you see. I could write them down and refer to them, but I can't remember them otherwise.

Q. Don't you recall you were in my office and you said you thought "it would be better to do that than to bring in all these expensive experts"?

A. Yes, I remember that.

Q. Now, you are satisfied I carried out your agreement, are you?

A. Well, the thing that I thought, that the insurance company had been able to present all their—

Q. Doctor, don't make statements, please. Just answer my question.

The Court:

He merely wants your understanding as to the stipulation that he and the other attorneys have offered to the Court in your presence today. Does that meet with your approval?

The Witness:

Well, I understood that all depositions taken in this case would be entered into it.

(By Mr. Anderson):

Q. The Judge has said we could do that and the lawyers have agreed to it. That was done in open Court here this afternoon. Now, have I substantially carried out the agreement that you made with respect to the trial of this case?

A. I can't remember, Mr. Anderson. I will have to accept your word. I will accept you as being truthful. You just say yes or no.

Q. Well, let me ask you this question. In a discussion with me about the trial of this case the other day, didn't you indicate to me that you didn't want to have to call all these experts back in here?

A. I said I didn't want any more expense than was necessary, because I had already been put to enough expense.

Q. And we could try the case on the same record it was tried on before Judge Choate, supplemented by the depositions; isn't that right?

A. Providing it took in my present condition, yes, which is all in the record, you see.

Q. You agreed to that?

A. And it is in the Travelers Insurance Company record.

Q. I understand that.

A. About my essential hematuria; but nothing was said about it.

Q. I know that. But I have substantially carried out the agreement that you made with me, have I not?

A. As far as I remember, yes.

Mr. Anderson:
That is all.

The Court:
Is there anything further?

Mr. Carey:
I have nothing further.

Mr. Dixon:
Nothing further.

The Court:
You may go down.

(Witness retires from stand.)

Mr. Anderson:
I consider I am precluded from putting Mrs. Stokes on the stand. I don't think anyone would be prejudiced by it, but I wasn't here when the agreement was made, and I know of nothing to do about it, but except then to rest the case.

The Court:
What is your desire about it.

Mr. Anderson:
Here is what I would want her to testify to, that she saw the doctor before the accident and after the accident, and what his condition was both times. I don't think she testified to that before.

The Court:
I don't know.

Mr. Anderson:
I am rather positive that she didn't. But I hate to be put in a position of not adhering to the agreement that was made, and if counsel insist on it—

The Court:
Mr. Anderson, it is my recollection that Mr. Nadeau and the other lawyers didn't say anything about her; but

if it is of vital importance, I want you all to do what you feel is just about the case. Do you want to put her on or not?

Mr. Anderson:
I would like to put her own for those two questions.

The Court:
What does counsel say?

Mr. Dixon:
Your Honor, that was not in my understanding.

The Court:
I have excluded her for the purpose of thrashing out this problem at this time and we didn't know then whether he wanted to ask her to take the stand for anything. He says he merely wants to ask her now to put into the rocerd something which he thinks was not in the record. I don't know whether it is in the record or not. But she probably would say that he was in fine condition before the accident and he was in bad condition after the accident.

Mr. Dixon:
She is in bad shape if she does, because she has already testified to his condition before and after the accident.

The Court:
Show it to Mr. Anderson.

Mr. Anderson:
Judge, I have already gone through Mrs. Stokes' deposition. There is a slight touch on it, but it is not what I wanted to prove., But I am not going to labor the point about it.

The Court:
All right, let's forget it.

Mr. Anderson:
It is a matter that I think couldn't possibly prejudice counsel; because we aren't going to retry the case. She is here. They have got no other evidence on the point to rebut it, anyhow. Even if she didn't testify to it, there is nothing they could do about it. I would like to put her on; but if they insist on it, there is nothing I can do about it. I let Mr. Nadeau come here.

The Court:
You do object, Mr. Dixon?

Mr. Dixon:
Yes, under the circumstances I think I must object.

The Court:
I don't think it is going to make too much difference, but in the light of the objection we will abide by it. The only fair thing is to keep the rules, once you make them. I know you feel the same way.

Mr. Anderson:
The plaintiff rests.

Mr. Carey:
Now, may I suggest, Mr. Anderson, in the interest of having the record in properly, in view of our agreement, that you offer the plaintiff's portion of the previous record as part of your case, so that we in turn can offer the defendant's portion as part of our case?

Mr. Anderson:

I don't see why it is necessary to offer these things, Judge. I take it, the matter is before you just as though it had all been tried. If we have to re-offer, then we will have to re-offer all the depositions.

The Court:

I think that is why Mr. Anderson made his statement before the trial. The Court tried to get you to take these things up one at a time. Let it be understood that the record made in the case—I can't remember the name—before Judge Choate last spring is all before me. In addition up to this point, there is the testimony of the Doctor, and Mr. Dixon has offered something in evidence. And if you all have anything additional, now is your turn, such as depositions and so forth, that were not in the "Choate" case, let's call it. You go ahead and put them in. You don't have to put the rest in. I will catch that. But I would like to have your help a little bit. It looks to me like it is simpler now than I thought.

Mr. Carey:

I think I understand Your Honor's ruling, but to clarify it, do I understand that the entire record including the exhibits which were admitted in the previous trial, which was #5607, is before Your Honor and admitted into evidence in the same manner and with the same effect as though those persons who testified in the previous trial testified here today?

The Court:

That is right, and we have proceeded on that theory. We are a little bit dubious because the cross-examination here has been rather beyond my knowledge as to what the direct was; but we have gotten along all right at that.

Now, have you anything to put on? It is your turn to present evidence?

Mr. Carey:

I wish, Your Honor, to offer the deposition, if this is necessary—as I understand, the depositions are also in the record; is that correct, sir?

The Court:

Well, the depositions that were taken, I understand. Do I understand correctly that there were depositions taken for these specific cases which were not introduced in the case before Judge Choate and they won't be in that record? I want to caution you about that. If you have something like that, you had better put it in now.

Mr. Carey:

Yes, sir. I wish to—

The Court:

Don't read them. Just put them in, if that is what you have.

Mr. Carey:

I wish to offer into evidence the deposition of Doctor Woodford Troutman, the original of which is in the file, in the same manner as though we were now to read the deposition to Your Honor.

The Court:

Now, at this time under the situation there, if there is anything in that deposition, Mr. Anderson, that is not proper evidence, perhaps you had better advise the Court. If there is not, why will it go into the record.

Mr. Anderson:
Judge, I am sorry, but I am not in a position to do that.

The Court:
I don't know who was up there. Where were those taken, in Louisville, Kentucky?

Mr. Anderson:
Yes, sir.

The Court:
I noticed you had some depositions taken in Louisville, Kentucky. Three doctors, I think it is. Were they all taken on behalf of the defendant, or were some of them taken on behalf of the plaintiff? Which were they?

Mr. Carey:
This one was taken on behalf of the defendants in the three cases, 5802, 5607, and 5807, and there was a stipulation between that parties that they would bear upon the trial of each of the cases.

The Court:
Yes, that's right. But they were not used in the previous trial; is that it?

Mr. Carey:
That's correct, sir.

The Court:
Judge Choate didn't pass upon any questions or matters in there at all. But I don't know whether there is anything wrong—is there anything in there that anybody has any objection to? That is the question directed to you, Mr. Anderson.

Mr. Anderson:

I know it, Your Honor. I can't answer it.

Mr. Carey:

I will say this, Your Honor, that the electrocardiograms which are an exhibit to that deposition were admitted in evidence and are in evidence at the previous trial, but the deposition, itself, was not read.

The Court:

The cardiograms are in twice?

Mr. Carey:

Yes, sir, they would be if the deposition is admitted.

Mr. Anderson:

Judge, there is also a deposition taken on behalf of the plaintiff, of Doctor Frank P. Strickler. I will have to ask Mr. Carey at this point whether there were any other depositions taken than the ones of Troutman, Atherton, and Strickler?

Mr. Dixon:

No, those were all, I am sure.

Mr. Carey:

Those, I believe, were all outside of the deposition of the plaintiff, himself.

Mr. Anderson:

Wasn't there a deposition from Doctor LeDrew?

Mr. Carey:

You are correct. But Doctor LeDrew's testimony is in the main record.

The Court:

I recall that name. His testimony is in the record. I will let you re-open, if you find any. I don't guess you did find any; is that it?

Mr. Anderson:

I will offer the deposition of Doctor Strickler. I was under the impression, Judge, you were just going to consider these depositions as part of the record, but accurately the way to get them in the record is to offer them. I will offer the deposition of Doctor Strickler taken on behalf of the plaintiff.

(Deposition of Dr. Frank P. Strickler was received in evidence and marked Plaintiff's Exhibit No. 4.)

(Discussion off the record.)

Mr. Anderson:

Now, with respect to the offer of the defendant of the two other depositions, Your Honor, I am not in position at this moment to say whether there is anything objectionable in them or not, and I don't want to take your time up to read them.

The Court:

I know what we are up against. Were you up there?

Mr. Anderson:

No, sir. Mr. Dixon and Mr.—

Mr. Carey:

I was there and Mr. Dixon was there, and there was local counsel representing the plaintiff.

The Court:
He had local counsel up there?

Mr. Carey:
Yes, sir.

Mr. Anderson:
He made objections, didn't he?

Mr. Carey:
Yes, he did.

The Court:
Then I think the Court ought to pass on the objections that are in the deposition.

The Court:
I will tell you about the best thing you can do. I will consider the objections that were made. Do I understand the objections were inserted as they went along in the taking of it?

Mr. Dixon:
I believe they were.

Mr. Carey:
There were objections, Your Honor, and I would reurge the same objections that I made to plaintiff's counsel's questions.

The Court:
You won't need to. I will consider them. I didn't know whether they were made or not, and I wanted Mr. Anderson to have an opportunity to make them and you, too, as to his. But if they were made as you went along

up there, they are already in evidence. I will take care of the rulings on them.

(Deposition of Dr. Woodford Troutman was received in evidence and marked Defendant Continental Casualty's Exhibit No. 1.)

Mr. Carey:

Inasmuch as you have allowed the plaintiff to re-open and the deposition of Doctor Strickler is in the record, I would like at this time to make a general objection to all of the testimony of Doctor Strickler which was based upon the history which Doctor Stokes gave to Doctor Strickler that Doctor Stokes had had severe heart trouble and that he had had a concussion. Insofar as Doctor Strickler's opinion was based upon that self-serving statement and those self-serving statements, I believe that his testimony is entirely incompetent, and I move to strike it.

The Court:

I will consider that objection.

Mr. Carey:

I wish also, and possibly plaintiff will stipulate to this, to show that Continental Casualty Company paid the plaintiff all sums due under the policy representing the period from the date of the accident, February 26, 1952, to September 10, 1952, at which time it discontinued any further payment.

The Court:

That is substantially what the plaintiff said, too, isn't it?

Mr. Anderson:

The complaint alleges it.

The Court:
That date, is that correct, Mr. Anderson?

Mr. Anderson:
The complaint alleges that, that you paid him until September 10, 1952.

The Court:
All right, go ahead, Mr. Carey. Have you got anything more? —Is that all, Mr. Carey?

Mr. Carey:
I am just taking a moment.

The Court:
Take your time.

Mr. Carey:
I think that is all I have.

The Court:
All right, you rest, do you?

Mr. Carey:
Yes, sir.

The Court:
Now how about you, Mr. Dixon; what have you got to put in here?

Mr. Dixon:
Your Honor, I would like to offer certain portions of the deposition of Doctor Lytle Atherton, which was taken on July 25, 1955 in connection with this case.

The Court:
Is that a deposition that has not been offered in evidence?

Mr. Dixon:
Yes, sir.

The Court:
It is one that has not been?

Mr. Dixon:
It has not been offered up to this point.

The Court:
It was taken for this case, was it?

Mr. Dixon:
Yes, sir.

The Court:
All right, let that be admitted.

—

Mr. Dixon:
I don't see any necessity under our previous stipulation regarding the evidence in this case, and as I understand my rights under it, I don't think that the entire deposition is admissible; but I would like to put in certain portions regarding aggravation of a pre-existing condition.

The Court:
There are rules about that. I don't know what you want to put in; but who took the deposition?

Mr. Dixon:
I did

The Court:
Your side?

Mr. Dixon:
Yes, sir.

The Court:
And you do not want to put it all in; is that it?

Mr. Dixon:
No, sir. Under this stipulation that we are acting under, I think the only evidence I can offer, affirmative evidence, is on this question of aggravation; and some of the deposition concerns the man's disabilities.

The Court:
Can you separate it?

Mr. Dixon:
I think I can.

The Court:
Just dictate into the record what pages you are talking about. I don't think it is going to make too much difference. It doesn't look like a very big document you have there, anyway.

Mr. Anderson:
Let me get the copy of it from the Clerk. Whose deposition is that?

Mr. Dixon:
Doctor Atherton. —No, that is not the one. (Indicating). His deposition was taken twice. I am only offering the second one. The first one was duplicated by the second one.

Mr. Anderson:
Let me have them both. I will give them back to you.

Mr. Dixon:
So that the record may be clear, Your Honor, with reference to the Travelers Insurance Company, we likewise tender the deposition of Doctor Woodford Troutman that has previously been tendered by Continental Casualty as part of their case.

The Court:
All right. I was going to consider it, anyway. So the record will be clear, it will be used for that purpose, and the record will show.

(Deposition of Doctor Woodford Troutman received in evidence as Continental Casualty's Exhibit No. 1, was thereupon received in evidence on behalf of the Travelers Insurance Company.)

Mr. Dixon:
I am now offering certain portions of the deposition of Doctor Lytle Atherton of Louisville, Kentucky, taken July 25, 1955, in this cause, and in the cause of Stokes v. Continental Casualty and Stokes v. Continental Assurance Company. Direct examination was by myself:

"1Q. Will you state your name, please?
"A. Lytle Atherton."

Mr. Carey:
What page, please?

Mr. Dixon:
I am on Page 3.

"2Q. You practice medicine in the State of Kentucky?
"A. Yes, sir."

On Page 4: "3Q. You are licensed to do so, I take it?"
"A. Yes, sir.

"4Q. Where is your office located?
"A. 321 West Broadway.

"5Q. Is that the Brown Building?
"A. Brown Building.

"6Q. Doctor, I wonder if you could briefly give us a little resume of your education and professional training.
"A. Well, I graduated in medicine from the University of Louisville, 1917; had a year of service in the Army, four years' service in the Oklahoma Hospital in Tulsa, Oklahoma. Since 1923, I have been practicing medicine in Louisville. The first fifteen years was restricted more or less to general medicine and what surgery I could do, since I was trained in surgery, and then about six months' training in urology at the Presbyterian Hospital in Chicago, after which time I have limited my work to the practice of urology.

"7Q. Doctor, have you had occasion at any time in the past to examine a Doctor Edgar W. Stokes of this city?
"A. Yes, I did.

"8Q. Do you recall approximately when you saw Dr. Stokes in a professional capacity?
"A. Well, sometime in the last—two or three years ago."

Page 5: "9Q. May I refresh your recollection? Would the date December 2nd, 1954, be about correct?"

Mr. Carey at that point stated: "Off the record, that's '52." The doctor then answered: "'52, do you mean?"

"10Q. December, 1952. Would that be about correct?
"A. It would be the date that's on the form that was filled out for the Equitable Life Insurance Company, whatever it was."

I think we can skip this business about the Equitable. At the top of Page 6:

"16Q Did you examine Doctor Stokes on that day?
"A. I did.

"17Q. What did your examination disclose, if you recall?
"A. At that time, we made a physical examination and we found no organic pathology that I could detect.

"18Q. Did you specifically examine Dr. Stokes' abdomen, abdominal region, and genito-urinary tract?
"A. The same as we do in an ordinary examination. The same thing that would be done in the form of a life insurance examination."

On Page 7: "22Q. Did you form any opinion as to whether or not Dr. Stokes was disabled at that time?
"A. Well, I couldn't say that he had physical impairments that I could detect.

"23Q. Could you detect any mental impairments?

"A. Well, I noticed he was more nervous and more jittery and apprehensive about his condition, his general condition."

Page 8: "29Q. How would you describe the symptoms you observed in Dr. Stokes?

"A. Well, he was jittery and he was nervous and he was fidgety and, well, I don't know, just over-all, just hypernervous individual, if you understand what that means, hyper.

"30Q. You cannot express any opinion as to whether or not the condition which you observed of hypernervousness in Dr. Stokes was in any way disabling?

"A. I would say this one thing, that the condition that he had or presented was similar to what I have observed over a period of years, except perhaps a little bit more exaggerated. I mean on his part, from the standpoint of, might I say, putting on a show, I don't think that. By "exaggerate," I mean from what he usually or originally presented.

Page 9: "33Q. Doctor, had you known Dr. Stokes for any length of time while he resided here in Louisville?

"A. I knew him a good many years.

"34Q. What was your opinion regarding Dr. Stokes' nervous or mental condition during those years that you have known of him?

"A. Well, he was like most all other psychiatrists.

"35Q. Well, what terms would you use to describe Dr. Stokes during the period of your acquaintance?

"A. I don't know how to answer that question.

"36Q. Would you say that he was a nervous individual over the period of time that you had known him?

"A. Yes, I think so, possibly due to his occupation, his specialty."

Page 10: "43Q. Doctor, what was your opinion regarding Dr. Stokes' condition as you saw it in December of 1952 at the time of your examination and his previous condition as you knew him to be?

"A. Well, he was more on the nervous side, I would say. He was more highstrung and nervous, and I think apprehensive about his condition because of the injury that he had had, and perhaps because of some of the subjective symptoms that he had presented."

On Page 11: "45Q. Would you say then, Doctor, that his condition in December of 1952 was aggravation of his previous condition as you saw it?

"A. Well, I would say it was somewhat magnified, yes.

"46Q. Doctor, bearing in mind, or assuming this definition of the term 'totally disabled,' that is being disabled to the extent that he is absolutely unable to engage in any gainful occupation whatsoever, was Dr. Stokes in your opinion, in December of 1952, totally disabled?

"A. Well, to my way of thinking, I didn't think so."

On Page 15: "70Q. Now, you had known him for a great number of years, Doctor?

"A. Yes, I have.

"71Q. And as I understand you to say, essentially his condition and conduct as you observed it in December of '52 was not basically different from that which you had observed for many years prior, is that correct?

"A. Perhaps exaggerated, yes.

"72Q. By 'exaggerated,' do you mean that now he was exaggerating it?

"A. No, not—I don't think intentionally perhaps. It was more or less a more marked symptom than he had presented in the last years that I had known him."

Mr. Dixon:

I think that is all, Your Honor.

The Court:

Is there any part of that deposition that you want to put in, Mr. Anderson?

Mr. Anderson:

Yes. I was going to wait until he got through. Then I was going to offer the part I think necessary for me to put in.

The Court:

You want to just offer the cross-examination? I don't know what he has left out or anything; but I take it that you have some?

Mr. Anderson:

Yes.

The Court:

Is it, in your opinion, related to the matters that he put in?

Mr. Anderson:

Well, I think so. I don't see how you can sift it out.

The Court:

I can sift them out fairly well, myself, because I will have a transcript. He will get this out for me. But if you want to put in—

Mr. Anderson:

I have got something specific I would like to put in, beginning with Question 89 on the Cross Examination of the witness whose testimony Mr. Dixon has just been reading from—that is on Page 18—down through the answer—

The Court:

That is direct, is it?

Mr. Anderson:

No, that is cross. —Down through the answer to Question 126 on Page 24. And also the cross-examination of the same witness on his deposition first taken in Louisville, beginning on Page 5 with Question 17, through the Cross Examination ending with the answer to Question 43 on Page 8; that deposition having been taken in Louisville on February 25, 1955.

The Court:

Was that identified to you, Mr. Slemp?

The Court Reporter:

Yes.

Mr. Anderson:

I have offered the cross-examination of both depositions. The one taken on February 25th against the Travelers, I don't know whether—

Mr. Carey:

I will have to object to that, Your Honor. I wasn't present. We didn't get any notice.

Mr. Anderson:

We will offer it against the Travelers.

Mr. Carey:

We didn't receive notice. We were not represented there. I know nothing of what is in the deposition.

The Court:

Take a little time and go over it. Do you see anything particularly wrong? Always remember, the only seriousness about this is that the record in New Orleans or some place will have it in there if you don't object; but as far as I am concerned, I think that it won't be any different for me to read it than to pass on the objections. It won't make any difference to you; but I caution you about the record. Just look at it and see.

Mr. Carey:

I believe, am I correct, Counsel, that you have offered the cross-examination in that deposition only?

Mr. Anderson:

Yes, sir.

Mr. Dixon:

I don't see how he could offer the cross-examination without the direct being in it, Your Honor.

Mr. Anderson:

Your Honor, I can do it on this basis. They have taken two depositions of the same witness—Travelers did.

They offered a part of one of the depositions. Now, the cross-examination I offered on the first deposition is in amplification of the doctor's testimony as they read it from the second deposition, and I think it is plainly fair that the whole matter should be put in.

The Court:

Do I understand that Mr. Carey offered a deposition and you are offering the cross of that; is that it?

Mr. Anderson:

No, that is not quite correct, Judge.

The Court:

Let me understand it right.

Mr. Anderson:

I think Mr. Carey did offer Doctor Atherton's deposition, did you not?

Mr. Carey:

No, sir, I did not.

The Court:

I thought I asked him if the direct and the cross was going in, and he said yes; that is what I thought he did. Is that clear?

Mr. Anderson:

He says that he did not, that only Mr. Dixon offered Doctor Atherton's deposition. Now, when Mr. Dixon got through offering portions of the direct examination of Doctor Atherton, I then offered in rebuttal of that portion all of the cross-examination of that witness taken on two separate depositions.

The Court:

I didn't understand there were two depositions. Was this man's deposition taken twice?

Mr. Dixon:

Yes, sir, the man's deposition was taken twice. And in order to resolve things, let me just offer the direct examination on this first deposition, as well as the portions of the direct examination from the second.

The Court:

All right, and the cross-examination will be admitted, too.

Mr. Dixon:

The first deposition was taken, for the purpose of identification, on February 25, 1955, and was taken only, as I understand it, in the case of Stokes versus Travelers Insurance Company.

The Court:

All right. That is admitted now on behalf of your client.

Mr. Dixon:

That's right. I will offer the entire direct examination and those portions of direct from the second deposition.

The Court:

And he is offering the cross in each case. That is all right?

Mr. Dixon:

Yes, sir.

The Court:
Have you got anything more, Mr. Dixon?

Mr. Dixon:
I have one more matter that we may not be able to resolve now. It has to do with—

The Court:
That paper you have got marked for identification?

Mr. Dixon:
For identification. Now, Doctor Stokes has admitted his signature, but has denied any knowledge of the document. I would like to offer it in evidence, and if the Court—

The Court:
Show it to Mr. Anderson, if he hasn't seen it.

Mr. Anderson:
Well, Your Honor, I don't think the paper is admissible in evidence in view of what they have brought out from Doctor Stokes; and it is apparent from having examined this in comparison with the other one that he did not write these answers out, himself. And I think that then you would have to—

The Court:
What is it; is it something that he signed?

Mr. Anderson:
It doesn't make a whole lot of difference either way. It has got substantially the same thing that the other one has. It says "mild concussion" in stead of "concussion. I didn't examine the thing carefully. It doesn't look to me like it makes too much difference.

The Court:

It is something he signed, something he gave to the company, and that is good enough to make it evidence; unless there is some serious mistake about it or overreaching, something like that.

Mr. Anderson:

Well, except that he says he doesn't know anything about the answers to the questions. He brought that out. In other words, they are offering it as an admission against him, and I don't see how it could be considered as such without proving that he knew what he was signing.

The Court:

Well, you have got that in evidence. That creates a dispute, you might say. I will admit the document in evidence, and then you have his statement that he didn't know what he was signing, whatever he said. All right, put that in.

Mr. Anderson:

Then I take it the Court overrules my objection?

The Court:

That's right.

(Defendant Travelers' Exhibit No. 2 for Identification was thereupon received in evidence as Defendant Travelers' Exhibit No. 2.)

The Court:

Now, is there anything further, Mr. Dixon?

Mr. Dixon:

Would the Court desire explanation of the penciled notations on each of these two documents? I have a witness here who can explain them to the Court. I don't think it is really necessary, because I don't think they have any bearing on the case. They are simply adjuster's notes.

The Court:

Let the record show as to the documents introduced in evidence which have penciled notations, that the penciled notations are not a part of the exhibit, and they will be ignored.

Mr. Dixon:

They are simply adjuster's notes.

The Court:

I don't know what they are. Is there anything further? —That is, unless they are all in pencil?

Mr. Dixon:

No, sir. Only certain ones. Defendant Travelers rests.

The Court:

Now, Mr. Anderson, it is your turn for any rebuttal. Is there anything you have to offer at this turn?

Mr. Anderson:

My client thinks that the deposition of Doctor LeDrew should be put in evidence.

The Court:

Will you make sure that it is not already in evidence?

Mr. Anderson:

No, I am positive it is not. He testified before Judge Choate; and I would like to offer it in view of my client's position in the matter.

The Court:

All right, let me look at the index, Mr. Call. Right there at the top, doesn't it show "deposition of Dr. LeDrew"—is that his name?

Mr. Carey:

No, it is not his testimony. He testified, Your Honor. I think it would be error to have his deposition.

The Court:

Oh, did the man testify? Then I won't allow the deposition.

Mr. Anderson:

My client thinks he also should have his deposition.

The Court:

No, no. He may not understand it, but you do, that if the witness testifies in person, that is all there is to it.

Mr. Anderson:

I understand, but I wanted to make the offer for him.

The Court:

I thought it was the deposition of the man, but if his actual testimony was taken—the only exception to that rule is that we are letting in the deposition of the plaintiff, himself, plus his actual testimony today; but that irregularity is being admitted by stipulation. All right, is that all you have?

Mr. Anderson:
Yes, sir.

The Court:
You rest? All parties have rested. Is there anything further here?

Mr. Carey:
Yes, sir. Portions of the deposition of Dr. Atherton have been introduced by the other two counsel, and I should like to introduce a portion of the same deposition which was omitted by the other two counsel.

The Court:
Well, now, the reason for it is because Mr. Dixon did that; is that it? Is that the doctor that Mr. Dixon offered?

Mr. Carey:
Yes, sir.

The Court:
All right, I will let you put in whatever you want to if it has got any bearing about it.

Mr. Carey:
I am reading at Page 12, Question 52, Direct Examination by myself—

Mr. Dixon:
Which deposition is that?

Mr. Carey:
In the deposition of Doctor Lytle Atherton taken July 25, 1955, at Louisville, Kentucky.

"52Q. Doctor, just a few questions, if you don't mind. As I understand, you examined Dr. Stokes in December of 1952?"

The deposition shows the witness nodded his head affirmatively.

"53Q. Had you examined him any other time prior to since?
"A. No.

"54Q. And on this examination you stated you made the same tests that you would for a life insurance examination. Would you tell us, please, sir, what those tests included?
"A. Includes the blood pressure. First it includes the taking of the history; second, it includes the physical examination of the heart, the lungs, the abdomen, reflexes, and urinalysis.

"55Q. Did you find anything abnormal in any of those tests, Doctor?
"A. No.

"56Q. Your specialty is that of the field of urology?
"A. That's right.

"57Q. And you found nothing abnormal in that respect?
"A. No.

"58Q. You found no evidence, for example, of a hematuria either essential or otherwise?
"A. I didn't find anything in the urine."

The Court:
Is hematuria a kidney trouble?

Mr. Carey:
Yes, sir, it is my understanding it is bleeding that shows up in the urine.

The Court:
That comes within the field of a urologist?

Mr. Carey:
Yes, sir. "A. I didn't find anything in the urine." I might say there is some testimony in the original record that he had a case of essential hematuria. That is why I am bringing this out.

"59Q. You found no thromopblebitis?
A. Nothing I was able to observe.

"60Q. You found no evidence of abrasions, bruises, contusions?"
"A. No.

"61Q. No evidence of marks on the head or elsewhere on his body, is that correct, sir?
"A. No.

"62Q. Is it accurate, then, Doctor, to state that you found no objective evidence of any injury or disability in this man?
"A. I didn't.

"63Q. Anything that you noted that you concluded might be wrong with him from a nervous standpoint or

any other standpoint was based entirely on subjective symptoms, Doctor?

"A. I think so.

"73Q. Was his appearance that of a man in good health?

"A. Physically, yes."

I think the others were put in in the beginning. On Page 16:

"74Q. A nervous and upset condition could be caused by many, many things, could it not?

"A Yes.

"75Q. For example, a man, if he had an upset in his martial life?

"A. That's right.

"75Q. A pending divorce?

"A. Yes.

"76Q. Would something in the nature of a claim on which the success hinged on whether he could convince someone whether he was nervous and irritable and disabled also in your opinion have some bearing on it?

"A. I think so.

"77Q. Did you take this man's pulse and heart also, Doctor?

"A. I did.

"78Q. You noted no abnormality about those features?

"A. No.

"79Q. Was there anything you noted wrong with this man other than the subjective symptoms which you have already mentioned to us?

"A. Nothing at all.

"80Q. And just to make it crystal clear, what we mean by 'subjective' is that, when you refer to the subjective symptoms, do you refer to symptoms over which the patient has control?

"A. That's right.

"81Q. Such as, for example, what he tells you—symptoms he himself can control; is that correct?

"A. That's right.

"82Q. Now, I believe it was your opinion, Doctor, that in your considered judgment this man was not disabled?

"A. Not totally and permanently disabled, I wouldn't think."

"83Q. Did you think in your opinion was he disabled at all, so far as his physical condition was concerned?

"A. As far as I could detect, I didn't think that he was physically impaired.

"84Q. And I believe we have already covered as to whether you saw any evidences of physical injury on his body—you did not, did you, sir?

"A. No.

"85Q. Did you see any evidences, Doctor, of objective signs or objective symptoms of a concussion? By that I mean—

"A. (Interposing) I would say no, not of a concussion.

"86Q. You would say no. Is that your answer?

"A. That's right.

"87Q. Isn't it true, Doctor, in your experience that you have seen individuals who are nervous and a bit jumpy and upset who have been able to conduct a perfectly normal business transaction and continue on in life and lead a normal business life?

"A. We see it all the time.

"88Q. And isn't that true of some in the medical profession as well as some other professions?

"A. No question about it.

"Mr. Carey:

I believe that's all."

The Court:

Mr. Anderson, does your cross-examination of Doctor Atherton cover matters raised by him?

Mr. Anderson:

It follows that.

The Court:

Then you rest again: is that it? Or have you anything further to add? I want to get the record exactly precise, you see.

Mr. Anderson:

I understand, Your Honor, and I appreciate it. The only thing I could do is to put Dr. Stokes up to let him testify about the hematuria. I don't see what it has to do with the case.

(Discussion off the record.)

The Court.

You have that right if they are now putting in a deposition which raises something. I am again not knowing whether all this has been gone into or not. But in the absence of any knowledge of it, he has a right to rebut what the man just put in. Go into it. Limit it as much as you can.

Thereupon: DR. EDGAR W. STOKES, a witness recalled for rebuttal in his own behalf, having been previously sworn, was examined and testified as follows:

Re-Direct Examination.

(By Mr. Anderson):

Q. Doctor Stokes, do you know what essential hematuria is?

A. Yes.

Q. What is it?

A. It is a hematuria of unknown origin.

Q. What does it consist of?

A. Well it generally begins with a frequency and a renal colic.

Q. What does that mean?

A. Well, you begin with having the urge—and I have had it since this trial has been going on—to urinate all the time.

The Court:

Is that what you call renal colic?

The Witness:

No, no. That is the beginning of it. You have a tendency to urinate all the time. And as it progresses and

becomes into renal colic, you have a spasm of the ureter whereby you want to urinate and you can't, and blood comes out. Now, this was diagnosed at John Hopkins by Doctor Hugh Young, and is in all the insurance companies' records.

The Court:

Don't you testify as to what people told you. You are merely testifying as to the definition of hematuria.

The Witness:

Well, it is something that you don't have all the time. I have had probably 60 to 100 attacks of this. And whenever I get under a tension I have it. But I don't have it all the time. You could examine me right now, and any doctor would say that I don't have it. But it wouldn't be worth 15 cents, so far as an opinion is concerned.

The Court:

All right.

(By Mr. Anderson):

Q. Does this hematuria manifest itself by the passage of blood in the urine?

A. Yes, yes. Because you are under a strain, your ureter is spastic and you want to urinate, and all you can do is give a few drops of urine and blood. And the pain is so terrible, at times I haven't had a dry stitch on me, that I have suffered so from it. And whenever I get under tension or mental strain is when it occurs. And unless a person saw me in one of those attacks, they would never know.

Q. Did you tell Doctor Atherton, whose deposition was just read, about the various symptoms that you had sustained as a result of the accident?

A. Doctor Atherton, in my opinion—
Q. Never mind. I didn't ask you that. Dr. Stokes.
A. Pardon?
Q. I only asked you, did you tell him the symptoms that you had after you had the accident?
A. I went to him for the insurance company to examine me for the accident.

The Court:
Answer the question.

The Witness:
I don't remember what I told him at that time.

(By Mr. Anderson):
Q. Did you employ him?
A. No. The insurance company employed him.
Q. And do you know whether he made notes of his examination of you?
A. I don't know.
Q. How long after the accident did you go to see him?
A. Well, I believe we said sometime in December there.
Q. Of '52?
A. '52.

Mr. Anderson:
I think that is all.

The Court:
Do either one of you want to cross-examine the doctor on what he has just testified? You are first, Mr. Carey. Have you any cross-examination?

Mr. Carey:
Just one question.

Re-Cross Examination #1.

(By Mr. Carey):

Q. It wasn't Continental Casualty Company or Travelers Insurance Company that hired Doctor Atherton to examine you, was it, sir?

A. I don't remember.

Q. Wasn't it Equitable Life Insurance Association?

A. I don't remember.

Mr. Carey:

That is all I have.

The Witness:

All I know is that they all get the same reports. It doesn't make any difference who hires them.

Mr. Carey:

I move that be stricken.

The Court:

Any questions, Mr. Dixon?

Re-Cross Examination #2.

(By Mr. Dixon):

Q. Doctor Stokes, you had this essential hematuria—had been having attacks of this for many, many years before this accident, had you not, sir?

A. That's correct.

Q. And this accident, itself, didn't bring on an attack of essential hematuria?

A. No. This accident had nothing to do with it.

Q. Essential hematuria has no consequence in this case, as far as you are concerned; is that right?

A. It has a consequence as a disabling factor, but it had nothing to do with my accident.

The Court:
Anything further now?

Re-Cross Examination #1.

(By Mr. Carey):
Q. As a matter of fact, you have already testified that during all this time prior to the accident you were in perfect health and could conduct your profession; isn't that right?

Mr. Anderson:
He didn't say that.

A. I didn't say that. Many a doctor—
Q. In substance?
A. Many a doctor that practices medicine—my father practiced for 12 years with a heart condition after he had several coronary attacks.

Mr. Carey:
That is all I have.

The Witness:
That didn't keep him from practicing medicine.

Mr. Anderson:
That is all. Come down.

The Court:
Does anyone else have anything more of this witness? —You may go down.

The Witness:
May I go to the rest room?

The Court:
Yes, you may leave. You don't have to stay here, if you don't want to.

(Witness retires from stand.)

The Court:
Do you want to proceed without him?

Mr. Anderson:
Yes.

The Court:
Let the record show that counsel for the plaintiff has stipulated that the case proceed while the plaintiff is out of the room. Go ahead.

Mr. Carey:
There is one more question and answer I wanted to read at the deposition of Doctor Atherton; on Page 27, Question 139:

"139Q. As a matter of fact, this man did conduct his practice as a psychiatrist and run a hospital or sanitorium for many, many years in a condition substantially the same as this, did he not?
"A. More or less."

That is all I have, sir.

The Court:
Have you anything further, Mr. Anderson? I am not requesting you to add anything further. I am giving you every opportunity, that is all.

Mr. Anderson:

I am sure I would like to get through. Let me get him and put him up there and ask him if he did that.

(Discussion off the record.)

Thereupon: DR. EDGAR W. STOKES, a witness recalled for rebuttal in his own behalf having been previously sworn, was examined and testified as follows:

Re-Direct Examination.

(By Mr. Anderson):

Q. Doctor Stokes, when you stepped out of the room, a question and answer was read from Doctor Atherton's deposition to the effect that you were in substantially the same condition, as far as practicing medicine in Louisville is concerned, at the time that he examined you in December of 1952, as you were prior to the accident. The question I am going to ask you is, was there any change in your physical condition after the accident as against your condition before the accident?

A. Yes. And can I say something?

Q. Well, you can explain your answer.

The Court:

You can say yes or no and then explain it. Go ahead.

(By Mr. Anderson):

Q. Go ahead, make your explanation. Confine it to the question.

A. Please repeat it again. I didn't get it.

Q. The question was, was your physical condition any different after the accident than it was before?

A. Yes.

Q. In what way?

A. Well, I had all these symptoms that I related before relative to my concussion.

Q. So your answer, then, is what you have previously given in your direct examination here today?

A. That's right. Now, may I add something that will prove a point?

Q. No, don't argue with me.

A. I don't want to argue with you.

Q. If you want to testify to a fact, make your statement.

A. But Doctor Atherton told me to go down to City Hospital and see the neurosurgeon down there and have a head picture made. I forget the technical name of it. Why would he order me to do that, if I didn't have a concussion?

Mr. Anderson:
That is all, now. That is enough.

The Court:
Is there any objection about that—Go down.

(Witness retires from stand.)

The Court:
Anything further Mr. Anderson?

Mr. Anderson:
No. We rest.

The Court:
Everybody rests?—All right.

(Whereupon, after discussion off the record, the trial was concluded, except for oral argument, at 4:38 p.m. of the said date, Thursday, September 6, 1956. The depositions of Doctor Frank P. Strickler and Doctor Woodford Troutman recieved in evidence as noted at Pages 76 and 78, respectively, are included in the following Appendix to Volume I of this transcript. Further Appendix contained in Volume II includes the transcript of Case No. 5607-M-Civil, Edward W. Stokes, Plaintiff, versus Continental Assurance Company, an Illinois Corporation, Defendant, received in evidence by stipulation as noted at Pages 3 and 73.

Appendix to Volume I.

The following is the deposition of Doctor Frank P. Strickler received in evidence as Plaintiff's Exhibit No. 4 as noted at Page 76 of this transcript:

United States District Court in and for the Southern District of Florida, Miami Division.

Edgar W. Stokes, Plaintiff,
vs. 5802-M-Civil.
The Travelers Insurance Company, a corporation, etc., Defendant.

Edgar W. Stokes, Plaintiff,
vs. 5607-M-Civil.
Continental Assurance Company, an Illinois corporation, doing business in Dade County, Florida, Defendant.

Edgar William Stokes, Plaintiff,
vs. 5807-M-Civil.
The Continental Casualty Company, Defendant.

Deposition of Dr. Frank P. Stickler for Plaintiff.

Louisville, Kentucky,
July 25, 1955.

Appearances:

Robert C. Hobson, of the law firm of Woodward, Hobson and Fulton, Louisville, Kentucky, for the plaintiff.

Wesley S. Carey, of the law firm of Carey & Papy, Miami, Florida, for the defendants, The Continental Casualty Company and Continental Assurance Company.

James A. Dixon, Jr., of the law firm of Dixon, De Jarnett, Bradford and Williams, Miami, Florida for the defendant The Travelers Insurance Company.

The deposition of Dr. Frank P. Strickler, taken pursuant to notice, at the office of Dr. Strickler in the Brown

Building, Louisville, Kentucky, on July 25, 1955, said deposition to be read as evidence on behalf of the plaintiff upon the trial of the above styled action.

Stipulation.

May it be stipulated by and between the parties hereto by their respective counsel that the deposition of Dr. Frank P. Strickler being taken this day may be used in all of the above-styled cases, there being three, and that the original of the deposition may be filed in the lowest-numbered case of the above three cases, and that such deposition may be used in all of the above cases by any of the parties, all objections to substance and admissibility being reserved and not waived.

May it also be stipulated that the requirements as to reading and signing of the deposition are hereby waived, and also requirement as to notice of filing and all other formalities.

DR. FRANK P. STICKLER, the said witness, being first duly sworn, was examined and deposed as follows:

Direct Examination.

By Mr. Hobson:

1Q. Would you be kind enough to state for the record your name, please?

A. Frank P. Strickler.

2Q. Are you a duly-licensed and practicing physician in Jefferson County, Kentucky?

A. I am.

3Q. Have been for how long, sir?

A. Since 1920. I came back here after World War I in 1920.

4Q. Will you please, sir, tell us what university or universities you have graduated from, and tell us what if any advance work you have done in medicine?

A. I graduated here at the University of Louisville, and I did six years' postgraduate interneship in New York City, and I was abroad in the Army for about two and a half years. I have done postgraduate work at the University of Edinburgh and London; Paris, Munich, Vienna, Budapest, and Rome. I am a member of the American College of Surgeons, International College of Surgeons, the American Association of Traumatic Surgeons; I am approved by the International Board of Surgery and the American Board of Surgery.

5Q. Have you had occasion to examine Dr. Edgar W. Stokes, Dr. Strickler?

A. I made a report on him on November 14th, 1952, a copy of which I sent to you.

6Q. In order to properly examine and evaluate his condition, did you take a history from him, Doctor?

A. Yes. I made a rather complete examination of him.

7Q. What history did he give you, sir?

(Discussion off the record.)

Mr. Carey:

If it please the Court, I wish to object at this time to any testimony that this doctor might give with respect

to history given or to subjective symptoms unless it is shown that this doctor was the treating physician who took care of or treated the patient. The record so far indicates that he examined him for an examination purpose only, and it would be improper, and I object to any questions with respect to subjective symptoms or history given to the doctor by the patient unless there is evidence that he was the treating physician.

Mr. Dixon:
Same objection.

8Q. Just go ahead, Doctor, and give us what history Dr. Stokes gave you.

A. The history—and I also have a copy of the history that the doctor in Fort Lauderdale forwarded to me, who treated him—the history that Dr. Stokes gave to me was as follows:

Dr. Stokes was thrown from his automobile when it turned over three times and was knocked unconscious and came to himself on the bottom of a canal in about three feet of water. The water brought him to consciousness, and he walked out of the canal. The car was badly demolished. Dr. Stokes was not drinking. Dr. Stokes was taken to the Clewiston Hospital, examined the next morning by Dr.—the doctor, Dr. Stokes does not remember.

The history was as follows:

"I was all black, bruised and swollen in the lower abdomen and all over the body. The doctor at first thought I might have had a ruptured posterior urethra, but later events proved that this was not correct." I have

a copy here of that doctor's report from Fort Lauderdale. "I went on to Fort Lauderdale, where I developed a thrombophlebitis of the left leg, and on the second day I was admitted to the Broward General Hospital. I also had an abrasion and contusion in the left frontal region; also I had a definite concussion. I remember striking the steering wheel. I also had multiple abrasions all over my arms and also had some trouble with my left ankle. I was in the hospital five days, then I went on to my home in Fort Lauderdale, and was under the care of Dr. Taylor. I left Fort Lauderdale on September 14th, arriving in Louisville September 18th. I also had some superficial thrombotic veins just above the pubic bone."

That's the history Dr. Stokes gave me, and was more or less substantiated by the Fort Lauderdale doctor.

Mr. Dixon:

Let me insert in here a motion to strike those portions of Dr. Strickler's testimony concerning statements made by him to Dr. Stokes, regarding the nature of the injuries received in the accident described by Dr. Strickler on the ground that said statements are self-serving, not substantiated by the record in this case, and are inadmissible and improper.

Mr. Hobson:

May we agree you may make whatever objections you wish when you get home, and avoid interruptions?

Mr. Carey:

I wish to join in that objection and move to strike for the reasons which I mentioned in my objection to the question inasmuch as it is not shown that the doctor was the examining physician.

Mr. Hobson:

Can't I agree that you may reserve your objections as you see fit?

Mr. Carey:

I would prefer to make objections as we go along. I hope you will be patient. I will be as brief as I can.

Mr. Hobson:

I am aware of the Federal Rules that you must make objections and advise counsel what they are, but I would certainly waive that.

9Q. Tell whether or not, for the purpose of your evaluation of Dr. Stokes' condition it was necessary that you have the history that he recited to you?

A. It is absolutely necessary, and we never treat any case without getting the history on it, and all hospitals under the American Hospital Association, and all doctors that I know of, take the history routinely, and it is impossible to find from the patient an exact diagnosis without having the history.

10Q. Were you interested in getting an exact diagnosis on Dr. Stokes?

A. That's what I examined him for was to find out. I certainly don't go to all that trouble for a daydream.

11Q. Now, Doctor, after obtaining that history, tell the Court what examination you made and what was your diagnosis based on your examination and the history, given?

A. Well, I made a physical on him following taking the history, immediately, and at this date Dr. Stokes is still very nervous and weak; anything of a mental effort

upsets him. The bruise on the forehead has completely cleared up at this time. The patient says he doesn't have any trouble with his eyes and no headaches; only a heavy fullness at times in the frontal region; very few eye symptoms. His hearing is definitely impaired in that he has noises in his ears when he is very tired. I assume that these symptoms are the result of a concussion at the time of the accident. No x-rays were taken at the time of the accident. All abrasions, bruises and contusions have cleared up, with the exception of the right heel which is still painful and should be x-rayed; the right little finger was cut and bruised at the time of the accident, but is well at this time.

"Conclusions: Dr. Stokes has had a severe accident and has sustained a severe concussion. I don't think he had a fracture. He has no swelling in his leg and no pain at this time from his phlebitis; he still has pains in his heel. I do not think he is able to return to work at this time and suggest that he be re-examined in about six to eight weeks."

Mr. Carey:

Move the answer be stricken for the reasons stated before, and counsel, I am willing to go along on your suggestion that all objections are reserved so that we may get along with the deposition. I don't want to aagravate either you or the Doctor.

Mr. Dixon:

Note the same objection.

A. (Continuing) He was examined by x-ray by Dr. Joseph C. Bell, and the x-ray report is as follows:

Dated November 17, 1952.

"Films of the right calcaneus were made in lateral and tangential projections. They show no evidence of fracture, bone destruction, spur formation or other intrinsic abnormality of the calcaneus. The bone appears normal in density and texture. The joint surfaces and spaces in the heel region and the posterior portion of the foot and ankle are normal in appearance. Calcifications are seen in the arteries in this region. Nothing else of importance can be found. Signed, Gerald M. Peterson, M.D."

12Q. What was the date of your examination, Doctor?

A. The date of my examination was the day that I wrote the report, November 14th, 1952.

13Q. Did you find at the time of that examination that Dr. Stokes was confused in any way, or about anything?

A. Well, I have known Dr. Stokes a number of years. I don't know exactly how many years. I haven't known him intimately, but he was certainly not at himself when I saw him.

14Q. In what respect, Doctor?

A. He was confused, nervous, and irritable.

15Q. What was he confused about? Did he have trouble with dates or names or what?

A. He was confused about his business, couldn't tend to his business, and he was confused about dates and places, and he was confused about the doctor who treated him, couldn't remember exactly what happened in Clewiston. He knew he had been seen by a doctor, but he couldn't remember who it was.

16Q. Did you advise him in any way with reference to medical treatment?

A. Well, I advised him to go ahead and rest and take his time and see if he could clear up. You know concussions sometimes clear up, but if there has been any brain damage or hemorrhage at the time of the concussion, why, the brain, once it is damaged, it becomes permanent because the brain has no power of regeneration, and sometimes a severe concussion is much more damaging to brain structure than a fracture.

17Q. Why is that, Doctor? How does that happen?

A. Well, the brain is like—I guess you could compare it to a glass bowl with jelly in it. The glass would represent the skull and the jelly would represent the brain. The brain is more or less of a gelatinous nature, and when you hit the bowl a severe blow, why, the jelly in it will quiver, and that quivering or vibration of the brain sometimes tears loose a lot of arteries and you have a hemmorrhage in the brain and brain destruction from that action.

18Q. In the examination of Dr. Stokes by you, was there anything that indicated to you that his brain had been damaged in this accident he related to you?

A. Yes, I think the confusion, I think the fact that his hearing was impaired had something to do with it, too.

19Q. And what about the condition of his nerves? Did that indicate anything?

A. Well, people trying to adjust themselves, and they can't think properly and all, very often—I am not a psychiatrist, but they do get nervous and upset.

20Q. Have you seen Dr. Stokes since the date of this examination?

A. I have not.

21Q. Doctor, based upon your examination on the occasion which you have recited to us, would you say at the time whether he was or was not disabled from following his business as a medical man, and in particular, a psychiatrist?

A. Well, I think he is definitely off base, and I certainly wouldn't want him as a doctor under those conditions. I don't think he was in any condition to practice medicine. I think he realized that himself.

22Q. What was your judgment as to whether or not that was a permanent condition, Doctor?

A. Well, I think it is more or less permanent, but in this report I suggested that he be examined some time later to arrive at a positive opinion about it. Sometimes these things clear up and sometimes they don't.

23Q. As I understand it, as of this date you are not familiar with what his condition is?

A. No. I haven't seen him since then. I don't know anything about what his present condition is.

Mr. Hobson:

I believe that's all.

Cross Examination.

By Mr. Dixon:

24Q. Doctor, I take it from your last statement that you were unable to form any positive opinion about this case, that you are not sure whether or not there has been permanent brain damage in Dr. Stokes?

A. I thought so at that time, but I thought that he should be seen again, and I so stated in my report. I think he has got permanent brain damage from his concussion.

25Q. I think you also recommended, did you not, that he undertake a course of rest and relaxation?

A. Yes.

26Q. In an effort to recover from the effects of this concussion, is that correct?

A. Well, it's always better to give these people a chance to rest. He was in no condition to follow the practice of medicine.

27Q. Do you know whether or not Dr. Stokes had retired from the practice of medicine?

A. I don't know anything about Dr. Stokes' business, whether he retired or not.

28Q. Do you know when he left Louisville?

A. No, I don't know that. I do know that he had been—had some trouble; I know that he had had an essential hematuria. He had two attacks of coronary occlusion. I don't think this accident helped either one of those conditions any at all.

29Q. Do you know whether or not at the time of the accident that Dr. Stokes described to you he was engaged actively in the practice of medicine?

A. I don't know what Dr. Stokes was doing then.

30Q. Is it your opinion then that Dr. Stokes was disabled insofar as practicing medicine or his specialty of psychiatry is concerned?

A. That's right.

31Q. You don't know whether or not he was disabled from the standpoint of performing what other business he might have had?

A. I don't know what other business he has. It's as much as I can do to attend to my own business, without knowing what other people's business is.

32Q. I believe you stated in the x-ray report, the report of the x-rays taken by Dr. Bell, that those were of the right heel, were they not?

A. Yes.

33Q. And those x-rays were completely normal insofar as showing any bony—

A. (Interposing) Well, there was nothing of importance found except there is calcification seen in the arteries. That would indicate that he had an ateriosclerosis. If he had it in his ankles, he may have had it in his brain, too.

34Q. What is the cause of arteriosclerosis?

A. Nobody knows definitely what causes ateriosclerosis. There are a lot of theories. Many people think it is due to metabolic changes, wear and tear on the body. Some people think it is due to fat disease, too much cholesterol.

35Q. Is that what we laymen call hardening of the arteries?

A. That's right.

36Q. Isn't that also a common condition insofar as it affects the brain?

A. That's right. Usually when you see it one place, it is fairly well general all over the body, and that may

have had something to do with this concussion. If you have got brittle arteries in the brain, and you get a crack on the head, why, you are liable to rupture something.

37Q. Isn't it true that the condition of arteriosclerosis can exist there without any trauma whatsoever?

A. Well, we don't know. We can't tell anything about arteriosclerosis in the brain until we get a hemorrhage, the only way we can tell about it. We can suspect it but we can't tell definitely about it. The only way you can tell about it is by arteriograms, take pictures of the arteries of the brain.

38Q. What is the effect on a person with arteriosclerosis insofar as its effect on the brain?

A. Well, he is a pretty young man. I don't know.

39Q. I am speaking hypothetically, Doctor, not with reference to Dr. Stokes.

A. Uusally the age of the patient, older people, they get completely disoriented, and don't know where they are at. They go into a form of life which the laity call second childhood.

40Q. Does it tend to make them confused?

A. (The witness nodded his head affirmatively.)

41Q. Disoriented?

A. And the elderly people get very much so. Miss Grimes can answer that question. Her mother is the same way.

42Q. Does it tend to make those people nervous and irritable?

A. Yes. They can't think right.

43Q. Now, Doctor, upon what factors did you base your conclusions that Dr. Stokes had suffered a cerebral concussion in this accident?

A. Well, I think the magnitude of the accident, the fact that his car was completely demolished, the fact that he wasn't clear in his mind what happened to him there.

44Q. Were there any other factors that entered into your diagnosis?

A. Well, that's enough. I don't need any others.

45Q. I believe you state that Dr. Stokes' hearing was impaired. In what way was it impaired?

A. He was partially deaf.

46Q. Could he relate to you when that first came upon him?

A. This came on him right after the accident.

47Q. Which ear was affected, do you know?

A. Both ears.

48Q. Do you recall how much his hearing was diminished?

A. No. I am not a nose and throat man.

49Q. You merely asked him if he could hear you?

A. The ticking—we hold a watch up and close one ear, and that is a rough test of it.

50Q. Is that what you gave him?

A. Yes.

51Q. What did he tell you when you held the watch up?

A. It showed he was definitely deaf.

52Q. Did he tell you whether or not he could hear at all?

A. He could hear it some, but not completely.

53Q. Do you know what specialty Dr. Stokes followed when he was practicing medicine here in Louisville?

A. Well, he ran a sanitorium up here off of Cherokee Road, and I think he had all kinds of patients up there, mental patients.

54Q. Did he hold himself out as specializing in any type of work?

A. Yes.

55Q. What type was that?

A. Well, I think he was a psychiatrist and he treated allied conditions of psychiatry and alcoholism, drug addicts, things like that.

56Q. Would that involve a rather intensive study of various types of brain conditions?

A. Well, people that are psychiatrists usually have to do this.

57Q. That's what they are concerned with, isn't it?

A. That's what they are concerned with.

Cross Examination.

By Mr. Carey:

58Q. Doctor, as I understand it, you never examined Dr. Stokes before November 14th, 1952, nor since?

A. Well, he came in here and talked to me about his condition, but I never really examined him. He was having some trouble with all this stuff, and he came in here and talked to me about it, just like one doctor would sit and talk to another, but I never really examined him before that.

59Q. This examination on that day was for the purpose of assisting him so that he could submit your report to the insurance company?

A. Well, for his own personal benefit. The fellow is very much worried about himself, and he wanted to find out what some other doctors thought about it. He went to Dr. Troutman and he went to me, and I don't know, he may have consulted a number of other doctors. You know how—doctors get hurt, they sit around and collect information from everybody, then usually they don't do anything about it at all.

60Q. Outside of the consultation with you, there was no treatment by you?

A. No. He came in here and talked to me about what I thought he ought to do, and getting advice, but I never really examined him until this day.

61Q. With respect to your physical you did on him, did you find any objective evidence or thrombophlebitis?

A. No. As I stated in here, he was pretty well cleared up when I saw him.

62Q. You found no evidence of abrasions, contusions?

A. They had cleared up by the time I saw him. The accident was in February, and I didn't see him until after that. I saw him in November. A number of months later that I saw him.

63Q. Now, I take it your answer then is that you saw no objective evidence at that time of any thrombophlebitis or abrasions or contusions?

A. No. As I said in my conclusion. I told you that.

64Q. There was nothing which you could find of an objective nature wrong with the ankle at that time?

A. No. The x-ray report on that was negative.

65Q. Now, were there any objective symptoms, Doctor, which you could find as of that date?

A. Well, I could see that he was very nervous and I could see that his hearing was bad.

66Q. Doctor, would his response to a watch-ticking test be pretty much a subjective test?

A. No. You can hear a watch or you can't hear it.

67Q. Wouldn't it depend on his answers to you whether he heard it or not?

A. I don't think he was covering up anything. I think Stokes is a very honest, decent sort of a fellow, in my dealings with him.

68Q. Regardless of who it might be, would that not be a subjective test—something within the control of the patient?

A. That's a test that more or less would be, but when a fellow gets up like this to hear you (indicating), you know there is something the matter with his hearing.

69Q. Were there any other objective symptoms or were there any purely objective symptoms?

A. No. You can't see a concussion. Nobody can.

70Q. I understand that.

A. You can't see that. That's inside the brain. You can't always see it by x-ray. You have to take arteriograms and sometimes they don't show it.

71Q. I understand then, Doctor, there were no objective symptoms or findings that you observed on that date?

A. Only the ones I gave you.

72Q. Was your diagnosis then of brain damage dependent upon the history he gave you?

A. That's right, and his present condition, the fact that he couldn't do his work and was all upset.

73Q. That's part of what he told you, as the subjective symptoms, is that correct?

A. Well, he wasn't able to do it. I think later on he sold his place and quit.

74Q. Well, Doctor, if I might refresh your recollection, I believe he sold his place before this accident happened, but it's not my purpose to argue with you.

A. I don't remember the dates. There is no argument about it. But he stopped doing practice, and he had a practice that would have paid him to kept going. He didn't make any money by stopping, because he had a good practice, and that part of it wouldn't have been an incentive to make him stop. I am quite sure he made more money in his practice than an insurance company will pay him.

75Q. My question, Doctor, is this. Did you arrive at your diagnosis of the concussion based upon what he told you, the history and what he told you he was then able to do?

A. That's right, and that's the only way in the world anybody can arrive at a diagnosis of concussion.

76Q. At any rate, that is the fact in this case, is it not, sir?

A. That's right.

77Q. Now then, when you say that his hearing is compatible with a concussion, you mean that a concussion would be one of the causes which could affect a person's hearing?

A. If you get a damage of those centers in the brain, and auditory nerve from the hemorrhage or shock, that affects, interferes with the hearing.

78Q. There are many other causes for interfering with hearing, are there not, Doctor?

A. Yes. Those things have to be evaluated by an expert ear man.

79Q. You didn't attempt to evaluate—

A. (Interposing) I am not an ear man, no.

80Q. I understand, sir.

A. I am a general surgeon.

81Q. Now, the nervousness and upset condition, that of course could be caused by many, many things, too?

A. If you get hit on the head and turn over in an automobile two or three times, you certainly have something to make you nervous. If you don't believe it, try it sometime.

82Q. I understand that. Take a hypothetical patient whom we know nothing about at the moment. We see

many nervous and upset people. Are there not many causes, Doctor, that could have brought about his condition?

A. Yes. But I don't know of a better one than turning around three times in an automobile.

83Q. Is it not possible that marital difficulties, the fact that his wife sued him for a divorce, would cause him to be nervous and upset?

A. He didn't get a divorce, I don't think. I think his wife and he are completely reconciled and very happy. The last I know, the last I heard.

84Q. I understand his wife sued him for divorce in May of 1952.

A. I don't know anything about his family affairs, but I know that the last I heard of them they were very happy and living together.

85Q. What I am asking you is this. Is it not possible that marital difficulties and any one of a million things could cause a man to be nervous and upset?

A. Sure, sure.

86Q. So that it's necessary for you to take a man's history in this case in order to come to a conclusion that his nervousness and upset condition were tied in with what he told you was a serious accident?

A. I believe I'd rather go through a divorce proceedings rather than I would standing on my head in a canal, and turned over three times in an automobile. At least I wouldn't get killed in a divorce procedure.

87Q. Doctor, my question is, it is necessary for you, in order for you to arrive at a conclusion and diagnosis

of that—his nervousness and upset condition was due to concussion—to take into consideration the personal history that Dr. Stokes himself gave you, and what he told you he was able and not able to do, is that true, sir?

A. Well, yes, I have to take a history. You objected to my taking the history in the first place; now you want to use the history.

88Q. No, sir. You misconstrue my objection. I don't object to the taking of the history, but I object to your testifying about the history.

A. I want to make it clear to you. I have no connection with Stokes at all. I don't know anything about his marital condition at all, but the man had an automobile accident and he was hurt in the automobile accident, and he sustained, in my opinion, a permanent disability.

89Q. Yes, sir.

A. And I don't think he is ever going to be well, if he had a dozen divorces, and I don't think anybody can laugh off an automobile accident of that magnitude, with all due respect to you and everybody concerned.

90Q. Doctor, I respect you. I want you to know that. Now then, if I may just ask one or two more questions, Doctor, do you have any personal knowledge other than what Dr. Stokes told you that he ever had a coronary occlusion?

A. He told me that he had been treated by Dr. Woodford Troutman, and also been treated by his doctor in Fort Lauderdale for it, and I don't think people go around getting treated for coronary occlusions unless they have some trouble with the heart. I wouldn't take treatment for coronary occlusion just for the fun of it.

91Q. My question to you, sir, is, do you know of his having one other than what he told you?

A. That's all I know about it. Dr. Troutman can tell you about that. I don't know anything about it. He was his doctor then.

92Q. Speaking of Dr. Troutman for a moment, Doctor, do you recognize him as an outstanding heart man in the country?

A. I am not here to qualify anybody as a specialist as to their ability or anything else, but I happen to know Dr. Troutman's training, and if you want me to, I will give it to you.

93Q. Do you regard him as an outstanding specialist in this community?

A. I will give you his training. I happen to know it very well because he was a protege of mine and you can guess whether he is a heart specialist or not. Dr. Troutman first went to McKeesport, Pennsylvania, where he was a resident in medicine at the McKeesport Hospital for a number of years. He left there and went to Bellevue Hospital in New York, where he was a resident in medicine, which is the best medical training in the United States today. He had an excellent background in general medicine then he went to Vienna and he went to the University of Edinburgh, where he stayed about eighteen months studying heart, and I think Dr. Troutman has about as good a background in heart conditions as anybody I know. He has certainly been exposed to it, and if he tells me that this man had a coronary occlusion he had one in my book.

94Q. Thank you, sir, and I presume the reverse is true, that if he told you he took electrocardiograms and there wasn't any evidence of heart damage—

A. (Interposing) Whatever he said would be all right with me.

95Q. Thank you, sir.

A. And I don't know what he said because I haven't talked to him.

96Q. Now, Doctor, would an electroencephalogram be the way of telling whether there was any brain damage?

A. They are still in the experimental stage, and 90 per cent of the people that take them can't read them, and I wouldn't give you two cents for one, and that's not only my opinion, that's the opinion at the Mayo Clinic, the Leahy Clinic, and the Crowe Clinic. You may not know it, but I started out to be a neurosurgeon, and I have kept up with it since then.

97Q. I take it that your answer is that you do not ever take an encephalogram?

A. No. I don't think they are worth the time to take them.

98Q. I still don't know whether you took one or not, Doctor.

A. No. We didn't take one that showed anything. I don't think if a fellow took one, he would be able to read it and know it anyway.

99Q. Doctor, could you give us a layman's definition of concussion?

A. I gave it to you once.

100Q. Well, I think you gave us an illustration. It doesn't necessarily involve brain damage, does it?

A. Doesn't always, but sometimes the damage to the brain is extensive in a concussion, and the only way you can decide that is by subsequent events.

101Q. Now, frequently these symptoms of nervousness and upset condition will vanish and disappear, will they not, sir?

A. Sometimes, if there is no brain damage and it depends upon the magnitude of the hemorrhage. If the hemorrhage is absorbed completely, then they come out of it all right. If it's not, they don't.

102Q. If this accident occurred on February 26th, 1952, your examination then was roughly eight and a half months or so afterwards?

A. Yes. He hadn't cleared up then.

103. That would not be sufficient time elapse for you to say it was a permanent condition?

A. Well, that would certainly be indicative that something was radically wrong, but I suggest that he get another examination. I made that clear in my report.

Re-Direct Examination.

By Mr. Hobson:

104Q. Doctor, let me just ask two things. I believe that one of the things that aided you in making your diagnosis was the fact that he was disoriented, being confused about various things?

A. That's right. He was confused. He wasn't thinking clearly at all.

105Q. Now, these insurance policies seem to have the right technical wording, and so I won't overlook anything, I want to ask you, Doctor, please, sir, if based upon a reasonable medical certainty, whether or not the condition you found Dr. Stokes in on the occasion of your examination constituted total disability as to this definition: It is of such an extent that Dr. Stokes is prevented thereby from engaging in any occupation or performing any work for compensation of financial value, and such total disability thereby presumed to be permanent when it is present and has existed continuously for not more than three months.

A. As I say, I had known nothing about Dr. Stokes' business except his medical business, and as I said earlier in this deposition, he was mixed up so, and out in left fied far enough that I wouldn't have wanted him for a doctor for me or any member of my family.

106Q. Was he in such shape that in your opinion he could, on the labor market, get a job that required any itelligent action or thought?

A. I don't think he could do any work at all. I don't think anybody wants a man on the job that is partly goofed up.

Mr. Hobson:

That's all.

Mr. Carey:

Now, for the record, I should like to object to all the testimony of the doctor with respect to subjective symptoms and any information which the man himself related to the doctor as to his condition, as to what he was or was not able to do; I object to the doctor's conclusions with respect to any such subjective symptoms and con-

clusions which were in part based upon subjective symptoms as distinguished from objective symptoms, and move that all of such testimony be stricken.

May I add also I wish to draw to counsel's attention and to the Court's attention that all of our objections at his request were withheld, and it was stipulated that such objections are reserved and none of them waived.

Mr. Hobson:

That is agreed to by me.

(Certificate attached by Margaret Commons, Notary Public.)

The following is the deposition of Doctor Woodford Troutman received in evidence as Defendant Continental Casualty Company's Exhibit No. 1 as noted at Page 78 of this transcript:

United States District Court in and for the Southern District of Florida, Miami Division.

Edgar W. Stokes, Plaintiff,
vs. 5802-M-Civil.
The Travelers Insurance Company, a corporation, etc., Defendant.

Edgar W. Stokes, Plaintiff,
vs. 5607-M-Civil.
Continental Assurance Company, an Illinois corporation, doing business in Dade County, Florida, Defendant.

Edgar William Stokes, Plaintiff,
vs. 5807-M-Civil.
The Continental Casualty Company, Defendant.

Deposition of Dr. Woodford Troutman for Defendants.

Louisville, Kentucky,
July 25, 1955.

Appearances:

Robert C. Hobson, of the law firm of Woodward, Hobson and Fulton, Louisville, Kentucky, for the Plaintiff.

Wesley S. Carey, of the law firm of Carey & Papy, Miami, Florida, for the defendants The Continental Casualty Company and Continental Assurance Company.

James A. Dixon, Jr., of the law firm of Dixon, DeJarnette, Bradford, and Williams, Miami, Florida, for the defendant The Travelers Insurance Company.

The deposition of Dr. Woodford Troutman, taken pursuant to notice hereto attached, at the office of Dr. Troutman in the Heyburn Building, Louisville, Kentucky, on July 25, 1955, said deposition to be read on behalf of the defendants upon the trial of the above-styled actions.

Stipulations.

May it be stipulated by and between the parties hereto by their respective counsel that the deposition of Dr. Woodford Troutman being taken this day may be used in all of the above-styled cases, there being three, and that the original of the deposition may be filed in the lowest-numbered case of the above three cases, and that such deposition may be used in all of the above cases by any of the parties, all objections to substance and admissibility being reserved and not waived.

May it also be stipulated that the requirements as to reading and signing of the deposition are hereby waived, and also requirement as to notice of filing and all other formalities.

DR. WOODFORD TROUTMAN, the said witness, being first duly sworn, was examined and deposed as follows:

Direct Examination.

By Dr. Carey:

1Q. Will you state your name, please, sir?

A. Woodford B. Troutman.

2Q. Where do you live, sir?

A. In Louisville at 1307 Willow Avenue is my residence.

3Q. And your office address is here in the Heyburn Building in Louisville?

A. Yes, sir.

4Q. Where we sit today?

A. 1616 Heyburn Building.

5Q. Doctor, you are a qualified physician in the State of Kentucky?

A. Yes, sir.

6Q. And would you kindly tell me what your specialty is and how long you have been practicing?

A. I have practiced the specialty of cardiovascular diseases since 1930, and have confined myself to that specialty.

7Q. What institution, Doctor, are you a graduate of?

A. University of Louisville, the year 1921.

8Q. Doctor, in your capacity as a physician, did you have occasion to examine Edgar William Stokes?

A. Yes, I have, on some three of four occasions, if my memory serves me correctly.

9Q. Will you tell me, please, sir, when the first occasion was that you examined him? You may refer to your notes if it would be of assistance to you, sir.

A. You have not asked me the question, but can I preface it with some remarks?

10Q. Certainly, sir.

A. Unfortunately, I say unfortunately since this occasion has come up, I have and we have searched throughly. I have in my records only one written consulta-

tion on Dr. Stokes which was made last October 1954. Now, I say from memory that I have seen Dr. Stokes in the past as a patient. I know that I saw him one time in the past because I turned over to him an electrocardiogram of a certain date. I don't remember the date now. Maybe you have that with you.

11Q. I am sorry that I do not, Doctor. Would you give us your best recollection as to the approximate date that might have been?

A. My best recollection of that would be that it was around 1947 or 1948.

12Q. And would that have been approximately the date or the time at which the EKG was taken?

A. Yes. That's where my recollection served me is by the date of the electrocardiogram which was made in this office, and I have that, I can remember that, because Dr. Stokes was here last fall, and at that time he was—when I was examining him, he asked me about electrocardiograms. Well, I say, I can remember also that just a few months possibly before that he wrote me from Florida asking for past electrocardiograms, and I searched through my files and found one which I mailed to him, and I can't remember now the date of that. I don't have a record of that, but it will have to be from memory, anything I could tell you relating to those dates.

13Q. You don't have any photostatic copy of that electrocardiogram?

A. I do not.

14Q. You don't know, sir, of the existence of any photostatic copy of it?

A. I do not know myself. We have a single copy, and I know it was, well, at his request, I can remember that,

because it's been in the last year, I say possibly the last year, that he wrote me a letter which I again have not kept. I don't have that letter from him, but he asked me for such electrocardiograms as I had, and I found one and sent it to him.

15Q. Doctor, as you are thumbing through your notes I see what appears to be a portion of an electrocardiogram. Would you mind telling us what those are?

A. This is a tracing made on him on October 4th, 1954. This is a letter from him of just a few days ago. He wrote about your coming. This is a photostatic copy with a letter from him, and a photostatic copy of another doctor's report to an insurance company about him out of Florida, and this is laboratory work, and that's all I have. (Indicating.)

16Q. Did you take any other than the one electrocardiogram of him, Doctor, yourself?

A. I can only again say from memory, I probably did take two electrocardiograms on Dr. Stokes over past years, but I have only been able to locate one.

17Q. And did you definitely, in your recollection, mail that one which you recall, to Dr. Stokes at Fort Lauderdale, Florida?

A. I definitely mailed it to him or handed it to him. Now, I say that because Dr. Stokes was up here in October, and I can't just definitely remember whether I found that electrocardiogram after his letter or whether when he was in Louisville he again asked me for it, and I then found it and maybe handed it to him, but I definitely turned over one electrocardiogram to Dr. Stokes.

18Q. Now, Doctor, the electrocardiogram that you now have in your possession was sent to you by Dr. Stokes?
A. No. This was made in my office.

19Q. He was here at that time?
A. He was here on October 4th, 1954, and I made this. This is our only electrocardiogram on him, yes, sir.

20Q. Would you mind describing that electrocardiogram, Doctor, for us, not only in our terms, but in technical terms so that another heart specialist would understand.
A. In technical terms I would say that the sinus rhythm is normal, that the T waves are normally directed in all leads, and in summary would say that this electrocardiogram would appear within normal limits.

21Q. You say then, Doctor, if I understand you correctly, that there is no heart damage or myocardial infarction or other irregularity that is apparent from the reading of those electrocardiograms that are before you?
A. I would say from my interpretation of the electrocardiograms of last October, it shows no evidence from an electrocardiographic standpoint of any heart disease.
22Q. Now, Doctor, will you give us the date on which that electrocardiogram was taken?
A. October 4th, 1954.

23Q. Was that taken in your own office here, sir?
A. Right in this office, yes, sir.

24Q. It was taken under your direction and supervision?
A. Yes, sir.

25Q. Would you tell us, sir, a little more about your qualifications and experience as a heart specialist so we will know a little more about your background?

A. Well, yes. I can say to you that I graduated in medicine in 1921. I did industrial medicine for three or four years, after three years in hospital training, two years of which, 1923 and '24, was in Bellevue Hospital in New York City. Then my industrial medicine was from 1925 to '29, and in August 1929 I went abroad and studied for one year in Vienna and London and Edinburgh for my specialty in heart and blood vessel diseases and have been in this specialty since October 1930.

26Q. And you have been practicing your profession in that specialty continuously since that time and up to the present time, Doctor?

A. Continuously, yes, sir.

27Q. Now, Doctor, did you also make a physical examination of the patient, Edgar William Stokes, on the date you made this electrocardiogram?

A. Yes, I did, and I think I should read you just verbatim what I have. He weighed 164-½ pounds. This is in my own handwriting. He says he had a heart attack in Florida in May 1954 under the care of Dr. Donberger. Today—this is date of October 4, 1954—"Today, while attending the Southern Psychiatric meeting at the Brown Hotel, had sudden pulsation of the heart and felt pulsation into both arms. None now. No pain. February 1952 had concussion following auto accident."

That's my history from Dr. Stokes. The examination, blood pressure 120/80.

28Q. What would be your interpretation of that, Doctor?

A. That is a normal blood pressure. The pulse rate 76 with regular rhythm.

29Q. Is that normal for a man of his age?

A. That also would be normal rate and rhythm. No murmurs were heard and no rales in the lungs.

In the fluoroscope, slight left ventricular prominence. Lungs clear.

Now, electrocardiogram. I am speaking now of this same one. Here is my note on it.

30Q. Doctor, before we go into that, do you attach any significance or importance to the slight left ventricular prominence?

A. I only say it was a finding by examination. It could or could not be important.

31Q. You didn't attach any special significance to it in your examination?

A. I only have it noted here.

32Q. Right, sir.

A. Shall I proceed?

33Q. Yes, sir, if you will, please.

A. The EGG—that's electrocardiogram—I say "now normal," and I have put in parenthesis, "Patient given copy of tracing." That would mean this tracing of October '54. Suggest a little whiskey and a half-grain of phenobarbital in any future episodes, and I concluded with this line: "No coronary disease demonstrated." And that's my record.

34Q. Doctor, I take it then that you would certainly conclude that so far as any condition of the heart is concerned, that this man was not suffering from any disability which would disable him from performing his customary occupation of a physician?

A. At that particular examination, I would again just state as I have stated, that I demonstrated no coronary disease.

35Q. And based on that demonstration, your opinion would be, wouldt it not, Doctor, that there was no demonstration or no evidence of disability from the heart standpoint?

A. I wouldn't be quite so dogmatic as to say that. I will only say that I demonstrated no coronary disease.

36Q. Put in our language, Doctor, does that mean you found none?

A. I found none by examination.

37Q. And you found none by electrocardiograph tracings?

A. Correct.

38Q. So that you in your examination, Doctor, exhausted all known means to you of discovering such heart damage, did you not, sir?

A. Not all known means, but that would be what I term in my office an average complete cardiac workup.

39Q. Did you not, Doctor, then satisfy yourself that from your examination, there was no evidence of any heart damage or any heart injury?

A. I satisfied myself to the extent that I stated I demonstrated no coronary disease.

40Q. And now, Doctor, did you make an examination of this patient from any other standpoint, or did you confine it to your specialty of heart?

A. I confined it to these findings which all relate to heart or blood vessels. I might further state one thing. I do have a laboratory sheet stating that we did just one laboratory procedure. We took the hemoglobin, the coloring matter of the blood, and that was 90 per cent, which we consider within normal limits. That's all the laboratory work we did.

41Q. Were there any other tests you performed?

A. No other.

42Q. Have you seen this gentleman on any other occasion since then, that is, in your professional capacity?

A. Not in a professional way, no.

43Q. Has he visited you in the office here since then?

A. I can't—if my memory serves me correctly, I would say no, and yet I may have seen him to just speak to him on the street while he was in Louisville, since this date.

44Q. And have you now told us, Doctor, all of the occasions which you remember and which you did examine him or during which he consulted you as a physician?

A. Yes.

45Q. Would you describe his appearance to us, Doctor, from the standpoint of health?

A. Well, if my memory serves me, again from memory, I would only say that on thi slast visit Dr. Stokes looked to me to be in reasonably good health.

46Q. Now, you have related that remark to the last visit. Do you have, sir, any recollection of any previous visits?

A. I have no recollection of ever seeing Dr. Stokes otherwise except in the office or on the street when I thought he looked reasonably well.

47Q. Did you know the gentleman when he was practicing here?

A. Yes. I have known Dr. Stokes for many years, many years.

48Q. Then, Doctor, is it correct to say that he appeared to be in reasonably good health on all of these visits he paid to you?

A. Yes, I would say that, yes.

49Q. Now, do I understand, Dotcor, that he related to you that he was attending a meeting of physicians and surgeons on the occasion of his visit to you when you made the EKG tracing?

A. In October last year, that's correct, yes, sir.

Mr. Hobson:

I think he said psychiatrists.

The Witness:

Well, that was physicians. That was the Southern Psychiatric meeting, which again, I remember, was meeting here, and it was a rather large group of physicians.

50Q. Doctor, I take it that your qualification is such that you are an expert in the taking and reading and teaching of electrocardiograph tracings?

A. I shouldn't answer that for myself.

51Q. I realize you want to be modest.

A. I can be modest, sir, and say I suppose I have been considered qualified to do so.

52Q. Doctor, I should like with your permission to have the reporter have the temporary custody of these tracings for the purpose of making a photostatic copy of them rather than deprive you of the original, so that they can be made a part of this record as exhibits, and I'd like to have it attached to be referred to as Exhibit A to this deposition.

A. To be more exact, this is one electrocardiograph.

53Q. It consists of six tracings?

A. It consists of what we call twelve leads, leads 1, 2, and 3, and if you wish, I will label them here and now.

54Q. I wish you would, sir. I would appreciate that.

A. Is there any opposition from anyone? I don't know who is representing anyone. Shall I give this for the record?

Mr. Hobson:

Sure.

(Photostat of the document above referred to, marked Exhibit A, is attached hereto and made a part of the record in this case.)

55Q. Just one more question, Doctor. Do you recall, sir, the tracing that you did give to Dr. Stokes at his request, and ask to what they showed? Do you recall whether they were also within normal limits?

A. I should certainly of course like to see the tracing I turned over to him, and I would not speak from memory

as to what it showed. I would not—I would not be able to say definitely.

56Q. Now, I ask this strictly from a layman's standpoint. If there is heart damage which shows up on a previous EKG, that heart damage should reflect on any subsequent EKG, should it not, sir?

A. Not 100 per cent, no. Not 100 per cent. I have seen electrocardiograms return to normal after damage.

57Q. What would be your explanation of that, sir—your interpretation?

A. Simply the collateral circulation after a supposed myocardial infarct. The collateral circulation can be so good that it can restore the heart muscle to the point that the tracing again becomes practically normal.

58Q. In other words, that would indicate that the original damage, if any, which showed up, was more of a temporary nature and had been overcome by the very good circulation subsequently, is that correct?

A. I think that could be more or less assumed when the tracing returns to normal, the health returns to normal patterns.

Mr. Carey:

Thank you, sir. I believe that's all.

Direct Examination (Continued).

By Mr. Dixon:

59Q. Doctor, you spoke of the fact that Dr. Stokes was here for the Southern Psychiatric Convention. Do you know what that convention consists of or what it is?

A. I did not attend it, but yes, I would know that that

is a more or less a regional meeting of the psychiatrists in the southern zone.

60Q. And I take it that the convention would be open to all members of the profession who were interested in keeping abreast of the developments in the profession, is that correct?

A. I would assume it is open to any M.D. who wishes to attend.

61Q. Do you have any idea as to how long that convention lasted?

A. No. I wouldn't remember that.

62Q. What is the usual order of business or things covered in a convention of this sort? In other words, what do they do at the convention?

A. They have scientific papers by guests lecturers on the subject concerned ,and it would have been psychiatry in this case. I assume.

63Q. Those papers would be read to the assembly or to the interested spectators, is that correct?

A. Yes, sir.

64Q. In 1948, when you took the electrocardiogram of Dr. Stokes, did you treat him at time for any heart condition or disease?

A. I would only have this recollection and again to state it, that I have seen Dr. Stokes I would say two or three times previous to the record that I show in past years, and I would say from recollection I must have advised as I did on his last visit here, "You take this or that thing," but no continuous type of treatment or anything of that kind. Just advise

65Q. I take it that Dr. Stokes consulted you in a professional capacity on at least one occasion prior to October 1954?

A. Yes, he did. He did.

66Q. That would be to receive your advice over some condition that may or may not have been present at that time?

A. Yes, sir.

67Q. Do you have any independent recollection now, or is there anything in your records that may jog your memory as to what Dr. Stokes' complaints were on these previous visits?

A. I have nothing in my records except before me here, nothing that we can find.

68Q. Doctor, were you acquainted with a Dr. Grant or a Dr. Stiles of this city? I think they are both deceased.

A. Have you full names?

69Q. No, I don't. I'm sorry.

A. Dr. Grant or Dr. Stiles. I don't seem to place—I don't place those names.

70Q. Have you ever had occasion to examine, to your knowledge, any records of the Kentucky Baptist Hospital regarding Dr. Stokes?

A. No, sir. I have no recollection of that.

71Q. What does the term "essential hematuria" mean?

A. Essential hematuria would mean bleeding from the genito-urinary tract, and when we use the term "essential," it means no definite cause found for the bleeding

72Q. Were you acquainted with Dr. Stokes personally over a period of years?

A. Yes, possibly since 1930.

73Q. Will you give us your opinion generally as to Dr. Stokes' mental condition during the period of time that he lived here in Louisville as you saw it?

A. I would have no opinions about that.

74Q. Did he impress you as being a nervous sort of a person, in the layman's sense?

A. I can't answer that question.

75Q. Did Dr. Stokes impress you as being an over-anxious type of person, or subject to any sort of anxieties or anxiety state during the period of time that you were acquainted with him?

A. I would only say there may have been times he would and times he wouldn't.

76Q. Are you acquainted with the type of practice that Dr. Stokes had here in Louisville?

A. Yes, sir.

77Q. What was that, please, sir?

A. He operated the Stokes Sanitorium on Cherokee Road, and handled, to my understanding—it was for mental and nervous cases, and possibly for alcoholics.

78Q. Did Dr. Stokes hold himself out in the profession as a psychiatrist or neurologist?

A. That's my assumption, yes, sir.

Mr. Dixon:

I think that's all.

Cross Examination.

By Mr. Hobson:

79Q. Doctor, I was interested to know what this sudden pulsation of heart and radiation of some type into both arms—I would assume the pulsation into both arms—is compatible with in your experience as a doctor?

A. In my experience that would be compatible with an acute anxiety reaction.

80Q. And just tell us what you mean by that.

A. I mean that he suddenly became tense, nervous within himself, and he felt that there was something impending, and he felt this pulsation, and to describe it more in layman's sense, it is, well, if suddenly a gun would go off in here, some of us feel a thumping for a little while through our bodies or something.

81Q. Is that a disabling thing?

A. Temporarily it can be very disabling.

82Q. And if it is a continuous thing, would it be disabling, in your judgment?

A. Yes. If it were continuous, it could be, yes, sir.

83Q. Did Dr. Stokes tell you anything at the time of your examination about lawsuits, litigation of any type, that you recall?

A. Well, aagin, my recollection—now, only by recollection, I believe he may have, for this reason. I looked and searched very hard to find an old electrocardiogram on him, and he possibly told me, "This is important from the standpoint of some legal matter," or something, and I then went back and looked and I finally found one electrocardiogram.

84Q. The purpose of the examination in October 1954 was not for any impending litigation?

A. I would be unable to answer that. I have read you the record.

85Q. But I mean, as far as your recollection of his talk with you, it was for no—

A. (Interposing) I don't have that down, so I would assume none.

86Q. What does a slight left ventricular prominence indicate, Doctor, or what can it indicate?

A. It can indicate a little hypertrophy or enlargement of the left ventricle, or it can indicate a heart that is lying in what we term a somewhat transverse position due to overweight, and giving a prominence of the left ventricle under the fluoroscope.

87Q. I notice in the phtotstatic copy of the form filled out by Dr. Donberger that it is his opinion that the patient continues to have daily attacks of angina pectoris. This apparently was dated July 15, 1955.

Mr. Carey:

I should like to interpose an objection to the interjection of any report of any other doctor as it is hearsay, improper, and move that the question which has been put be stricken from the record.

Mr. Dixon:

Same objection and same motion.

88Q. And I believe, Doctor, that you have the same thing I have got, on a photostatic copy, of a disability claim signed by Dr. Donberger, haven't you?

Mr. Carey:
Same objection.

Mr. Dixon:
Same objection.

Mr. Carey:
Same motion.

Mr. Dixon:
Same motion.

A. I have a photostatic copy of a report from Dr. Donberger dated 7/15/55. yes.

Mr. Carey:
Move the answer be stricken.

Mr. Dixon:
I move it be stricken.

Mr. Hobson:
By agreement, you may have whatever objection you want, but I assume the laws of Florida are not unlike the law of Kentucky, that counsel has a right to ask a question subject to the proper objection; so by consent or agreement you may have whatever objection you think is appropriate, but I would like to continue, if you don't mind, so that the reporter won't be continually interrupting, and interrupt my train of thought.

89Q. Doctor, referring down there to Item 10, where it says, "Patient continues to have daily attacks of angina pectoris." Are you prepared to say that is not correct, from your examination, as a result of your examination of October 4, 1954?

Mr. Dixon:
Same objection.

Mr. Carey:
Same objection.

A. I could make only this remark about it, that—well, no. This was just this year, of course. Just now, wasn't it?

90Q. Yes, sir.
A. I don't know. He did not to me say anything in October of 1954 about daily attacks of angina pectoris. I don't have any record of it, of course.

91Q. Now, my question is, as a result of your examination on October 4th, '54, could you say that this reference to angina pectoris now is incorrect?

Mr. Carey:
That's objected to. Same objection.

Mr. Dixon:
Same objection.

A. It's not necessarily so. Not now.

92Q. Just explain to us—
A. (Interposing) It is not necessarily incorrect now.

93Q. How is that possible, Doctor, that he could be having angina pectoris attacks now, and have the tracing that you have indicated the result of October 4, 1954?
A. It would be possible in this case that he could now have developed some disease to bring on attacks of angina pectoris, since the date of my examination.

94Q. Just tell us what you mean by "angina pectoris," Doctor.

A. Those are the words to describe a smyptom complex, meaning pain, usually located over the middle of the chest, and usually will radiate out into the left inner arm, and brought on by exertion.

Mr. Carey:

I want my objection to be shown to the question and move the answer be stricken as there is no evidence of angina pectoris.

Mr. Dixon:

Same objection.

95Q. Is that then not a condition of the heart in and of itself? It is more of a description of a symptom?

A. It is—oh, yes, is a condition of the heart, producing that symptom complex, yes, sir.

96Q. We assume—this is still theoretical, but we assume that angina pectori results from an insufficiency of the blood supply through the coronary arteries bringing on this symptom complex.

97Q. So that, as I understand your testimony, there are phases of angina pectoris that even the heart specialist don't know completely about?

A. Yes, sir. Yes, sir.

Mr. Dixon:

Same objection as before, and same motion.

Mr. Carey:

I wish to make the same objection, same motion.

98Q. Would you mind explaining to a dumb lawyer what a myocardiac infarction is, please, sir, or myocardial, I believe the term is used in here.

A. A myocardial infarction is disease of an area of heart muscle following the occlusion or thrombosis of a coronary artery.

99Q. Is that because the blood supply is blocked off to the heart muscle?

A. That's right.

100Q. I believe you have told us about everything you have got in that file, haven't you, Doctor?

A. I have tried to tell you everything I can remember.

Mr. Hobson:

That's all.

Re-Direct Examination.

By Mr. Carey:

101Q. I'd like to ask one or two questions, and, Doctor, I will be through. As I understand it, Doctor, an Ekg merely tells what the present condition is? It doesn't predict the future, is that correct?

A. I must say even further than your question, a normal electrocardiogram causes me to say that I find I can demonstrate no evidence of heart disease, but it only speaks for that day. Indeed so.

102Q. That's what you mean by your answer that of course it might be possible that something has happened since you made these tracings?

A. It is possible.

103Q. Which naturally would not be reflected in these tracings in any way?

A. Yes, sir.

104Q. And your answer in that point would be mere conjecture and talking about a mere possibility rather than any prediction or statement of fact on your part?

A. I could make no prediction from this single electrocardiogram.

105Q. Now, we have spoken, Doctor, about the pain in the arms being compatible with an acute anxiety reaction. I presums, sir, that the mere pendency of three or four lawsuits might contribute to an anxiety reaction which would briing about such symptoms, is that right?

A. I would think it could add to it. I must correct part of your question, however. I believe you said "pain in the arms," and so on. My record did not say that. I think I gave you that clearly. I said that he had a sudden pulsation of the heart and felt pulsation into both arms; none now. Then I said, "No pain."

106Q. Thank you, sir.

A. "No pain."

107Q. I appreciate your correction. Would martial difficulties, Doctor, with his wife, for example, also tend to contribute to such an anxiety reaction, in your opinion sir?

A. I should think it could with me.

Mr. Carey:

Thank you, sir. That's all I have.

Re-Direct Examination (Continued).

By Mr. Dixon:

108Q. Doctor, when you speak of an acute anxiety reaction, what do you mean by that, in layman's terms?

A. Well, may I say I am speakinsg as a layman when I use that term, but that's just my term for it. I mean, just extremely nervous, and you just—in other .vords, you can almost blow your top, we will say, and that's when this thing will start, you know, like that. (Indicating) That's speaking in terms of a layman, and I want to be a layman when I am using those terms. I am not too qualified from the standpoint of the psychiatric literature.

(Certificate attached by Maragaret Commons, Notary Public.)

(Note: Photostatic duplicate of Exhibit A, attached to original copy of deposition as noted on Page 152, was received in evidence as Plaintiff's Exhibit #9 in Case No. 5607-M-Civil, as noted on Page 215 of Volume II.)

Transcript of Case No. 5607-M-Civil, Edward W. Stokes, Plaintiff, versus Continental Assurance Company, an Illinois Corporation, Defendant, received in evidence by stipulation, as noted at Pages 3 and 73 of Volume I.

In the District Court of the United States for the Southern District of Florida, Miami Division.

Edgar W. Stokes, Plaintiff,
vs. No. 5607-M-Civil.
Continental Assurance Company, an Illinois Corporation, Defendant.

January 24, 1956.

The above entitled cause came regularly on for trial before the Hon. Emett C. Choate, United States District Judge, and a jury duly and regularly impaneled and sworn to try the same, in open Court, at Miami, Florida.

Appearances:
Murray Sams, Jr., Esq., and Phillip Goldman, Esq., appearing on behalf of the Plaintiff.

Wesley G. Carey, Esq., appearing on behalf of the Defendant.

The Court:
You may proceed.

(Whereupon, after opening statements by Mr. Sams and Mr. Carey, the following proceedings were had.)

The Court:
Ladies and gentlemen of the jury: In order to expedite this case and save your time, counsel on both sides have taken part in what is known as a pre-trial conference. In the course of that conference, they have made certain admissions.

Now, admissions when made by both sides constitute complete evidence on that particular issue so that no evidence is necessary.

As part of those admissions, I ame going to call to your attention at this time, so that when there is no evidence on the matter you will understand that none is required, because the matters are admitted.

It is admitted that up to the time of the alleged disability, that is, when the accident took place, that the doctor had paid the premium on this particular policy.

It is admitted that this policy was issued, and a copy of it will be put in evidence so you may view it in case you desire when you retire to consider your verdict.

It is admitted that the date of the claim or alleged disability was February 26, 1952, and that the policy on that particular moment was in full force and effect

It is admitted that on a claim made after February 26, 1952, for the period of February 26, 1952, to September 10, 1952, the defendant company paid to the doctor $150 per month and that since September 10, 1952, had failed and refused to make any further payments, claiming that the doctor is not and was not disabled as required under the provisions of the policy.

It is agreed that the action was commenced after the time had elapsed which was required to have elapsed prior to bringing this action, and it is agreed that the doctor did file what he claimed to be a proof of his disability as required by the policy before he could maintain and bring this action.

Those matters are stipulated and agreed and no evidence upon them will be required.

Proceed.

Mr. Sams:

Before we call the first witness, I wonder if we could have just a brief recess. We have a couple of matters, and I think it would save some time.

The Court:

How many minutes?

Mr. Sams:

Just a short recess.

(Whereupon, the jury withdrew from the Courtroom.)

The Court:

Proceed.

Mr. Sams:

One of the primary reasons I asked for the recess was to get in the record early, so there would be no necessity of putting on any proof, a stipulation that Mr. Carey and I entered into in which we agreed to submit to Your Honor the question of attorney's fees.

We are entitled to attorney's fees, but we felt to simplify the issues it would be simpler—

The Court:

Dictate it into the record. Furnish me with affidavits.

Mr. Sams:

Either that or bring someone in.

The Court:

That won't be necessary. Just ordinary affidavits will suffice citing cases that were comparable.

Mr. Sams:

It is hereby stipulated by and between counsel for the respective parties that the question of attorney's fee may be presented to the judge without a jury. Shall we say at a later date?

Mr. Carey:

The only thing I would add to that is that naturally, that would be true only if the jury finds—

The Court:

Yes, if the jury finds for you.

It shall be submitted to the Court either with or without supporting affidavits. It is agreed between counsel that the Court may make such decision based upon the Court's experience, knowledge of the case, or upon that plus affidavits that counsel may and will furnish within three days after a veridct.

Does that suit you gentlemen?

Mr. Carey:

Yes, sir.

Mr. Sams:

Yes, sir, Judge.

(Whereupon, after argument off the record, the jury returned to the Courtroom.)

The Court:

Do you each waive the polling of the jury and consent they are present?

Mr. Sams:

Yes, sir.

Mr. Carey:
Yes, sir.

The Court:
The plaintiff will proceed.

Mr. Sams:
At this time, if Your Honor please, I believe it will be without objection, we would like to offer in evidence the hospital records; that is, the Broward County Hospital.

Mr. Carey:
I have no objection.

The Court:
They will be admitted.

(The hospital records referred to were received in evidence as Plaintiff's Exhibits #1 and #2 respectively.)

Mr. Sams:
We might have the Clerk mark a photostatic copy of the policy as Plaintiff's Exhibit #3.

Mr. Carey:
No objection.

The Court:
It will be admitted.

(The document referred to was received in evidence as Plaintiff's Exhibit #3.)

Mr. Sams:
I will call Dr. Dornberger.

Thereupon: GEORGE R. DORNBERGER was called as a witness on behalf of the plaintiff, and, after having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Sams:

Q. State your name, please, sir.

A. George R. Dornberger.

Q. Doctor, I might ask you, if you please, to speak as loudly as you can. Look over toward the jury. Sometimes it is a little difficult to hear in this Courtroom.

Mr. Sams:

If any of you do not hear the doctor, raise your hands, and we will have him speak louder.

Q. Are you engaged in the practice of medicine?

A. Yes, sir.

Q. Where is that, Doctor?

A. Fort Lauderdale, Florida.

Q. Are you engaged in any specialized field of the practice of medicine?

A. Yes, sir, internal medicine.

Q. Dr. Dornberger, what is your business address?

A. 866 Northeast 20th Avenue.

Q. Are you associated with anyone else?

A. Dr. Thomas L. Roberts.

Q. Do you and Dr. Roberts both specialize in internal medicine?

A. Yes, sir.

Q. Doctor, would you state for the jury briefly what your educational qualifications have been to prepare you for your specialty of internal medicine.

A. I graduated from the Universtiy of Nebraska Medical School in 1938. I had internship, residency, which was interrupted by about four years in the AUS, Army of the United States.

Then, for the next seven years, I limited my efforts to the field of internal medicine at the Mayo Clinic. Subsequently, I became a member of the American Board. Diplomat of the American Board in internal medicine.

Q. Doctor, what were the years that you were at the Mayo Clinic?

A. 1945 to 1952.

Q. You say during that time you did nothing but internal medicine?

A. That is correct.

Q. What was your position at the Mayo Clinic?

A. I had three years on a fellowship; then an assistant to the staff, and then a consultant in internal medicine

Q. For how long were you a consultant?

A. Three years.

Q. While you were in the service, were you then practicing medicine?

A. Yes, sir.

Q. Were you specializing in internal medicine?

A. No, I was not.

Q. That was general practice?

A. That is rather difficult to define. I was a doctor in the Army of the United States, which meant that we had numerous and sundry jobs. I was a flight surgeon for a time and later transferred to a general hospital.

Q. Dr. Dornberger, after leaving Mayon Clinic, where did you then go?

A. Fort Lauderdale, Florida.

Q. Have you been engated there in the private practice of medicine since that time?

A. Yes.

Q. Are you a member of any other societies within your own specialty or in the field of the practice of medicine other than the American Board of Internal Medicine?

A. Only the usual, the Broward County Medical Association, the Florida State Medical Association, the American Medical Association, the usual things.

Q. Your membership in the American Board of Internal Medicine, is that an honorary membership, Doctor? Do they give that to everyone who practices in the field of internal medicine?

A. No, that is not true. There are definite board requirements. As I recall it, after internship, there must be at least three years of formal training limited to the field of internal medicine, followed by two years of practice limited to internal medicine, following which one may take the written as well as an oral examination, and when successfully passed he becomes a Diplomate of the American Board of Internal Medicine. That is what we choose to call certification.

Q. And you are so certified?

A. Yes, sir.

Q. Doctor, have you had occasion in your practice of internal medicine to see and examine Dr. Edgar W. Stokes, the plaintiff, who is sitting right here (indicating)?

A. Yes, sir.

Q. Can you tell us what the date of that examination was?

A. I first saw Dr. Stokes professionally on the morning of April 24, 1954. At that time he came to the office, and an electrocardiogram was taken. He was examined briefly and sent to Broward General Hospital where he was under my care.

Q. Doctor, feel free to refer to your briefcase. I notice you have your briefcase. If you have any notes of your

examination, feel free to refer to them at any time you like.

Can you tell us, Doctor, how he came to your office? Do you know that? Had you ever seen him before, or was he sent to you? How was it he got to you?

A. I had never seen Dr. Stokes professionally. He was referred to our office at an earlier date for an electrocardiogram by a local physician. The electrocardiogram was taken by my associate and interpreted, and when the question of chest pain of this acute illness for which he was seen came up, naturally, he called our office, and I happened to be in, so I saw Dr. Stokes professionally.

Q. I understood you to say that after a brief examination of Dr. Stokes in your office, you sent him to the Broward General Hospital?

A. That is correct.

Q. What did you have done for him, Doctor, or did you go immediately to the hospital with him? Will you tell us what was done for him in the hospital?

A. Very briefly, his son is a doctor. He had been vistiting with him. I received a telphone mesasge from his son that approximately thirty to thirty-six hours before he was seen in my office, the doctor awakened in the middle of the night with a severe chest pain which radiated to the left shoulder, and it lasted about two hours. He was reluctant to do anything about it, but the next day, particularly the next evening, the son became somewhat concerned, because he was running a low-grade fever. His color didn't look too good. He was quite pale, and still he refused to see a doctor.

But the next morning, when the pain persisted, the son called my office, and I told him to bring him to the office. So, he arrived at the office. An electrocardiogram was taken.

Q. Was it taken in your office?

A. It was taken in my office. I read it. I examined him briefly. He had a low-grade fever.

Q. Doctor, wait a minute. Let me get these things as they came along.

The first thing you did was to take an electrocardiogram?

A. That is correct.

Q. Will you tell the jury, and tell me, what an electrocardiogram is. What do you mean by an electrocardiogram? I think most of us know, but possibly some of us do not.

A. Well, very briefly, the mechanism of the heart is an electrical current. That's what makes the heart beat. If there is an area of damage or lack of oxygen to the heart, it is manifested by changes in this electrical current which can be recorded on a graph, which we choose to call an electrocardiogram.

On the basis of the tracing that was taken in my office, I suspected that he had an acute myocardial infarction, which means in plain English, he had a mild heart attack.

Q. What is that?

A. A mild heart attack.

Q. And you called that an acute—

A. Myocardial infarction or coronary thrombosis or coronary occlusion. Again, in simple terms, what President Eisenhower sustained recently, a heart attack.

Q. Doctor, you did an electrocardiogram. That was the first thing you mentioned. Then you said you took his temperature?

A. Yes.

Q. Do you recall what his temperature was?

A. 99.2.

Q. Is that what you term a low-grade fever?

A. That hour in the morning, and it is stated in my record that the son, who is an M.D., had taken it the

evening before, and it was 100.4. That represents a low-grade fever.

Q. What was his general condition? Can you describe that to us at the time he was in your office?

A. He appeared somewhat pale. He was extremely apprehensive and was somewhat short of breath. Blood pressure was 120/80, which is a normal reading. However, I might mention that on previous occasions the blood pressure had been recorded at 146/82, and with an incident like this, that makes us suspicious of an acute heart attack, when the blood pressure drops.

Any other physical findings were of no significance.

Q. No significance?

A. No.

Q. Doctor, I have here what is marked Plaintiff's Exhibit #1. This purports to be the hospital record of the North Broward General Hospital. Will you look at that, Dr. Dornberger, and tell me whether or not that is the hospital record which was made by that hospital on the admission of which you have just spoken to us.

A. Yes, sir.

Q. On the first page, if you will let me hold that so I can read it, because I cannot remember all, it states myocardial infarction, posterolateral, acute, mild. Is that correct?

A. I would like to clarify that. On the front of the sheet, we are required to make an admitting diagnosis. It appears here myocardial infarction suspect. Now, there are several reasons why we do that. In other words, at the time he was admitted, I was not sure that he had a heart attack, so-called, and if it develops that this man has insurance and so on, or later wants to take out insurance policy and somebody makes a definite diagnosis of myocardial infarction, he wouldn't get the policy. So that just means we are suspecting. If you will note the

next line, the final diagnosis, that means that after the patient is dismissed from the hospital, we are required to write down what I, as the attending physician, felt the diagnosis was. That diagnosis is myocardial infarction, posterolateral, acute, mild. In plain English, that is a mild heart attack.

Q. The word "acute," what does that mean? Does that mean present, at that time?

A. That means that it came on thirty-six hours before hospital admission.

Q. And the mild is the definitive of the severity or the nature of it?

A. That is correct.

Q. An acute condition?

A. That is correct. At first, President Eisenhower was thought to have a mild attack, and subsequently, I believe it was moderate as contrasted to severe.

Q. Referring to those hospital records, if you will, what tests were run on him in the hosptial that were significant in so far as you were concerned? You have stated to us that your initial diagnosis was a myocardial infarction suspect. Your final diagnosis was a more positive diagnosis of myocardial infarction, posterolateral, acute, mild. What were the significant developments during the course of his hospitalization, Dr. Dornberger, which made you make that final diagnosis?

A. I remember this case quite well for several reasons. In the first place, he is a doctor. It is a rule of thumb that it is difficult to take care of doctors, and this man is no exception. His story was extremely difficult to evaluate. He was having pain here one minute, pain in the shoulder the next minute. He was extremely apprehensive, talking about his father who died of a coronary disease. He was going to die of the same, and so on.

When we rechecked him in the hospital, he was fairly comfortable, and we took numerous further electrocardiograms. Because he was a doctor, and because the situation was not clear-cut, I asked my associate, Dr. Roberts, who had seen him before, to see him in consultation, and he did not feel that he was having an acute heart attack, and thought it was best to reassure Dr. Stokes, because he was so tense and anxious and was practically imposible to keep in bed.

Q. That is your associate, Dr. Roberts?

A. I ame quoting from the record as I saw it.

Q. In other words, Dr. Roberts did not agree with your initial opinion?

A. That's correct.

Q. Now, at the time of the admission, which was approximately thirty-six hours after the onset of his original pain, the white blood count was about twice normal. As I stated before, he had a low-grade fever. Another test which we do, the so-called sedimentation rate, usually is normal at the onset, but if we are dealing with, as in this instance, a so-called heart attack, which means a little blood clot in the vessel which causes death of tissue, and it takes several days to produce this fever and elevate this sedimentation rate. At the time of his admission, the sedimentation rate was 6. Five days later, it was 28, which is about twice normal, and it was repeated a few days later, and it was still elevated, as was the white blood count.

In view of that, and because there was some question in my mind as to whether or not this man actually had an acute heart attack, so-called, or whether he had—my associate used the terms, myositis, neuritis, in plain English, again, an acute rheumatism—I used another, shall we say, senior internist in our community, who enjoys a good reputation, to see Dr. Stokes in formal

consultation, which means that he was requested, as was Dr. Roberts, to fill out a consultation sheet.

Q. Who was that doctor?

A. Dr. E. C. Chamberlain.

Q. Did he then examine Dr. Stokes, to your knowledge?

A. Yes, sir. He examined Dr. Stokes and gave us an opinion.

Q. Is that opinion in the hospital records that you have there?

A. It is in front of me now.

Q. I wonder if you would read to us what Dr. Chamberlain said.

A. This is dated June 2, 1954, which was approximately one week, around eight days, after admission.

A confirming history is elicited which can be interpreted as either consistent with a small myocardial infarct or a brachial plexus neuritis or myositis of shoulder girdle. Nothing is added to the picture by the physical findings. Study of the serial electrocardiograms—that means the several tracings that had been taken—suggests a small posterior myocardial infarct. With these changes was a transient leukocytosis and an increasing sedimentation rate. Five days has elapsed since the last electrocardiogram, so I think another tracing might be helpful at this time.

Now, his diagnosis and recommendation: In an attempt to resolve the above dilimma, I lean uncertainly to the diagnosis of a small posterior lateral myocardial infarction.

It is signed Dr. Chamberlain.

Q. In other words, this doctor uncertainly leans toward the mild heart attack that you have described to us?

A. Well, I would like to quote further from the rec-

ord in summary. There was a lot of thought put to this. As a matter of fact, it is my record that I have had curb-stone consultations with several other doctors, which mean that I presented the tracings to them, presented the story, and showed them the findings and said, "Look, we are in trouble here. What do you think?"

In all, there were six internists who expressed an opinion, but only three of them who are quoted directly in the record.

I summarized this in my discharge note dated June 5, 1954.

"In summary we have a 56 year old physician who has not practiced medicine for approximately two years because of the residuals and sequelae of an automobile accident. His father died of coronary heart disease at the age of 52. Thirty-six hours prior to the admission to this hospital on 5-24-54, he was seized with severe pain in the left precordial region in and about the left shoulder girdle which has never been clearly defined by the patient." That means the region about the heart.

"However, his wife and son, who is an M.D. confirms the presence of a low-grade fever 24 hours after the onset and stated that he was definitely short of breath and appeared very pale. The electrocardiogram which was taken in the office approximately 36 hours after the onset of the pain showed some segment changes"—that is the changes in the electrical current that I mentioned briefly before—"and it was felt that it was best to hospitalize him for further observation. His subsequent course in the hospital revealed leukocytosis"—which means an elevated white count—"low-grade fever and the sedimentation rate went from 6 on admission to a high of 28 on 5-29-54. The electrocardiograms were certainly not diagnostic but were most suggestive of myocardial damage. It was the consensus of opinion

of the internist who saw him that the clinical diagnosis was posterolateral myocardial infarction acute of mild degree. This is the final diagnosis and he will be continued to be treated in this manner. Dismissed."

Q. Dr. Dornberger, how many electrocardiograms were taken while he was in the hospital? Are those shown in the hospital records?

A. There is a copy of each of the electrocardiograms that were taken in the hospital, and there are one, two, three, four.

Q. All right, sir. May I ask you if you will, please, to put your notes down for a second and step down in front of the jury.

Will you show the jury, hold it up so they can see what you are speaking of when you talk about electrocardiograms. Those are tracings, are they, Doctor, that are made on a machine?

A. Yes, sir. These are photostatic copies of the tracings.

Q. Yes, sir. The originals are in the hospital records. Is that correct?

A. That's correct.

Q. The photostatic copies that you are looking at would be just as easy to read as the originals, would they not, Doctor?

A. That's correct.

Q. Doctor, I want to ask you whether or not you find in those electrocardiograms anything unusual or anything that would indicate an abnormality, or are they within normal limits?

A. This first tracing in the hospital record was taken twenty-four hours after the tracing in my office, and the subsequent tracings were following this one.

These tracings in themselves do not mean too much.

The interpretation of the first one, we describe some changes which mean nothing to you, but we are asked to give an opinion when we read these. As compared to the four previous tracings in the office, the last of which showed some elevation of the ST segments and leads two and three with upright T wave suggests acute myocardial damage.

In other words, the impression here was taken on the basis of comparison of the tracing in the office as compared to this one. These tracings do not mean much in support of the diagnosis except that there is a change from the record that was taken in the office.

Q. If you had nothing to go by but those tracings right there at which we are looking, nothing but that, had made no examination of Dr. Stokes and did not have the benefit of the sedimentation rate, the low-grade fever and that sort of thing, would it be your opinion that those tracings were within normal limits?

A. I am sure I could not diagnose an acute myocardial infarction from those tracings alone.

Q. Do you have with you the tracings you took in your office which you have described to us as being the ones taken some thirty-six hours after this episode?

A. Yes, sir, I do.

Q. Do you have in your office an electrocardiograph machine? Is that the correct name?

A. Yes, sir.

Q. Did you take these tracings yourself, or are they taken by someone under your supervision?

A. They are taken by a laboratory technician.

Q. Were these tracings that you have handed me tracings taken in your office?

A. This tracing was taken in my office on 5-24-54, which was the date of admission to the hospital.

Q. Is that the tracing of Dr. Edgar W. Stokes?

A. That's correct.

Mr. Sams:
I would like to offer this in evidence as Plaintiff's Exhibit #4.

Mr. Carey:
No objection.

The Court:
It will be admitted.

(The document referred to was received in evidence as Plaintiff's Exhibit #4.)

Q. Have you taken other tracings of Dr. Stokes prior to this one?
A. Yes. There were previous tracings and, as you can see, there have been innumerable tracings since that time.
Q. Do you have with you the tracings that were taken before this one?
A. Yes, sir.
Q. I wonder if you would let me hold those for a moment.
A. There were three.
Q. These are dated as to the dates they were taken?
A. That's correct.
Q. They were taken in your office?
A. That is correct.
Q. They are Dr. Edgar W. Stokes?
A. That is correct.

Mr. Sams:
Is there any objection to the introduction of these?

Mr. Carey:
No.

The Court:

They will be admitted as Plaintiff's Exhibits #5, #6 and #7.

(The documents referred to were received in evidence as Plaintiff's Exhibits #5, #6 and #7, respectively.)

The Witness:

I might add that they were interpreted by my associate, Dr. Roberts, and read as normal.

Q. I want to ak you some questions about them. You are able to interpret these, are you Doctor?

A. Yes.

Q. Have you had an opportunity since that time to examine these yourself, the three previous ones?

A. Yes.

Q. Have you independently looked at them?

A. Yes.

Q. Does your opinion agree with that of your associate that they are normal.

A. I am sorry. The three tracings taken prior to May 24, in summary, the only abnormal electrocardiogram I have ever seen on this man, and I have seen a lot of them, was the one taken on May 24, 1954, in my office.

Q. In other words, this one right here that you took the morning of his admission to the Broward General Hospital is the only electrocardiogram that has ever been seen by you on Dr. Stokes out of all these you have and the ones at the hospital that you interpreted as being abnormal?

A. Correct.

Q. What I wanted to know, and the reason I got these in, Doctor—

Mr. Carey:

Just so we might know, what is the date of that one?

Mr. Sams:
That one is May 24, 1954.

Mr. Carey:
That is Exhibit #1?

Mr. Sams:
That is Plaintiff's Exhibit #4.

Q. I do not know if this is possible, but I am going to ask you to try to show the jury, if you can, where the abnormality in this is and, if possible, to show any comparison with any other electrocardiogram, or describe to us what the abnormality is in this electrocardiogram. Can you do that, Doctor?

A. We do this sometimes, although I am not so sure it is wise.

Q. You might come over here so they can all see. If you cannot see, put up your hand.

A. There are twelve different leads, which means the same thing as taking twelve different photographs of the heart muscles, so to speak.

The only significant changes in this record are what we call the ST segments, which are these (indicating). This is where the heart beats, in here, so-called (indicating).

Now, there is a base line here (indicating), and this so-called ST segment is slightly elevated. I think you can see that as compared to other tracings where this segment of tracing is on the same level.

That is what we call a slight elevation or ST segment in leads two and three. That is the sort of thing that makes us suspicious that the back side of the heart is not getting oxygen. That's what it means in plain English.

Q. Along with that, Doctor, what is the significance,

number one, of the low-grade fever? Is that a usual symptom in this sort of thing?

A. The only way I can explain that is to explain these terms as best I can.

There is a large artery which supplies oxygen to the heart muscle in the front side, which we call anterior. There is one on the back side, which we call posterior, and they have branches. Now, if the heart muscle, which requires a lot of oxygen in order to beat, becomes short on oxygen, usually the patient has a sensation of pain or discomfort in the chest or in the shoulder or in the arms, and we call this angina or angina pectoris. That may be caused by a little spasm where there is a temporary lack of oxygen, so to speak, and one gets relief with nitroglycerin. So, we speak about coronary sclerosis. That is an assumption that if a patient has angina pectoris he also has some narrowing or damage to the coronary blood vessels per se, if he has the angina. Now, the basic disease, then, would be coronary sclerosis. If there is a little blood clot, if one of these arteries that supply the oxygen—we speak of occlusion or thrombosis. Now, the area of the heart muscle supplied is thereby deprived of its oxygen and it dies, just the same as you have seen people or heard about people who get a black toe or gangrenous toe from lack of blood supply. Associated with that, then, it will produce an increased sedimentation rate, a low-grade fever and increased white blood count. Those are what we call objective findings which make us think in terms of a small blood clot in the heart as compared to a spasm. So, those things in this particular man were important. He sarts out with the pain. He gets shock. He does no look well, and twenty-four to thirty-six hours later, he does have fever. He does have an increase in the white blood count. There was one change in the electrocardiogram, and even

though his subsequent clinical course was that of a mild infarction, in my opinion, we never know those things at the onset. As you may well know, they suggest that it would be two weeks before they knew whether President Eisenhower had a mild or moderate or severe or what was going to happen. That's the reason for putting a patient in the hospital and repeating the tests and checking him every day.

So, those things were very important to me, and in the final summary of this hospital admission, they were very important to everybody who saw him. In other words, the only safe thing to do was to treat him as if he had an acute myocardial infarction, which means a small blood clot on one of the small blood vessels to the back of the heart.

Q. Dr. Dornberger, were you Dr. Stokes' treating physician in this particular episode, that is, as far as the internal medicine question was concerned?

A. From that stantpoint of his heart trouble, if you so desire, I have been his attending physician since I admitted him to the hospital on that date.

Q. What was that date again?

A. 5-24-54.

Q. After his discharge from the hospital, have you seen him in your office?

A. Yes, sir, on innumerable occasions.

Q. Can you give us any idea, Doctor, how many times you have seen him? You do not have to go through all your records, unless you have them there.

A. I don't believe I have that information. I think one can tell from the size of this that I saw him very frequently for the first several months following the hospitalization. I have seen him on numerous occasions since. We have had repeated electrocardiograms. I have had to see him many, many, many times.

Q. Doctor, I want to ask you this question: In your opinion, from the history elicited from Dr. Stokes, and from your repeated examinations, and from the various tests that you have made, is it your opinion that Dr. Stokes is disabled as a result of the myocardial infarction, posterolateral, acute, mild, that he suffered for which—

Mr. Carey:
That is objected to as being leading.

The Court:
Yes. I think I will sustain that objection.

Mr. Sams:
I am sorry, Your Honor.

The Court:
On the ground it is leading.

Mr. Sams:
This is an expert witness. I think you have some right to lead him. I just asked his opinion.

The Court:
You have some right, but it is still leading. Do it another way.

Q. Do you have any opinion as to whether or not Dr. Stokes—

Mr. Sams:
We will get two different opinions from this doctor, one on the heart and—

The Court:
All right.

Q. Do you have any opinion, Doctor, as to whether or not Dr. Stokes is disabled?

Mr. Carey:
I object to that question unless it refers to disabled from what.

Mr. Sams:
That is what I asked the first time, and that is what I thought was objected to.

The Court:
I will let him answer that. He could be disabled and not be disabled under the terms of this policy. You are probably leading up to that.

Mr. Sams:
I will ask the reason. I want to get the reason. There will be several different opinions from this doctor.

The Court:
Answer that. Is he or is he not disabled, in your opinion?

The Witness:
In my opinion, he is disabled.

Q. Can you tell us, Doctor, to what extent, in your opinion, Dr. Stokes is disabled?

Mr. Carey:
Again, if the Court please, disabled from what?

Mr. Sams:
I will connect this up.

The Court:
He stated he will connect it up. If he does not, you may move to strike.

Mr. Sams:
I will connect it as to what he is disabled from, and if not—

The Court:
I think we had better adjourn until 1:45.

(Whereupon, at 12:10 p.m., a recess was taken until 1:45 p.m.)

Afternoon Session, 1:45 p.m.

The Court:
Do you each consent the jury is present and waive the polling thereof?

Mr. Sams:
Yes, sir.

Mr. Carey:
Yes, sir.

The Court:
You may proceed.

Thereupon: GEORGE R. DORNBERGER resumed.

Direct Examination (Continued).

By Mr. Sams:

Q. I believe, Doctor, the last question I asked you—I can have the reporter read it back—was to what extent you feel Dr. Stokes is disabled.

Mr. Carey:

If Your Honor please, I repeat the same objection.

The Court:

I will permit it as a preliminary question to develop material matters. You may move to strike this testimony if it does not develop into something material.

Q. To what extent do you feel he is disabled, Doctor?

A. I believe I said in answer to your question that I felt he was disabled. I think he is totally disabled from a medical standpoint, in my opinion.

Q. When you say "totally disabled from a medical standpoint," do you mean totally disabled from following the profession of the practice of medicine? Just what do you mean by "totally disabled," Doctor? Is that an occupational disability?

A. Yes.

Q. Do you feel that this man would be able to engage in any type of gainful occupation?

A. In January of 1955, in one report that I made in writing in answer to that question, I stated that in my opinion it is extremely doubtful whether he will ever be able to enagage in any gainful occupation.

Mr. Carey:

I move that be stricken as not responsive. He was asked the question as to whether he is disabled now.

Mr. Sams:

That is what I am going to ask him.

The Court:

Let us come to the point. What is your opinion about his being able to engage in gainful occupation at the present?

The Witness:

My opinion has not changed, sir.

Q. In other words, Doctor, it is your opinion at this time that Dr. Stokes is totally disabled from engaging in any gainful occupation?

Mr. Carey:

I object to that as being leading, if the Court please.

The Court:

Sustain it on the grounds of repetition, too.

Q. Doctor, would you state your reasons for your opinion; that is, why do you feel Dr. Stokes is totally disabled medically?

A. As his attending physician—in a sense an internist is a family physician—I have had occasion to see him as a patient on many occasions since the hospital episode that I described. In making that statement, I feel that there are several conditions which enter into the total picture. By that I mean every time I have seen him, and that includes the initial hospitalization, there has been

a great amount of anxiety. He complains of numerous and sundry things, such as bursting in the head, forgetfulness, inability to concentrate. Almost without exception when he comes to my office, he has written down in tabulated form a number of simple questions that he wants to ask me. If he does not write them down, apparently, he does not remember.

So, there is a great amount of confusion. He has had, in my opinion, a heart condition which we have rechecked and rechecked. From that condition alone I would say that if it were not for the anxiety factors and the question of head injury with the residual symptoms from this auto accident, and I am taking the word of fellow doctors who have seen him, I would not say that the heart condition in itself would be disabling. But it is the over-all picture as I see this man when he walks into my office, by the questions he asks me, by the symptoms he represents and so on that I have rendered continuous reports to various companies to the effect that in my opinion he is still totally disabled.

Q. Do you feel, Doctor, that this man in the condition you have described to us would be capable of practicing medicine?

A. I can only give you my opinion, and the answer is no.

Mr. Sams:

I believe that is all I have.

Cross Examination.

By Mr. Carey:

Q. Doctor, your testimony, I believe, has been silent as to any electrocardiograms taken following May 24, 1954.

The Court:

He said he found no abnormality, nor any indication in those electrocardiograms alone of the ailment. Is that correct?

The Witness:

I believe it is a matter of record that I testified that in three previous tracings, and in numerous, innumerable —there is a stack of them in here that have been taken in my office since he was discharged from the hospital, and we interpreted them as being normal.

The Court:

Only once did he interpret them to be abnormal. Is that correct?

The Witness:

That is correct, sir.

The Court:

That was the one he took the morning—

The Witness:

The morning he had the chest pain.

The Court:

That is when he went to the hospital?

The Witness:

That is correct.

Q. Do I take it, Doctor, in your opinion, the man has made an uneventful recovery of what you diagnosed as a mild myocardial infarction as of April of 1954?

A. Yes, in so far as we can determine. The difficulty that we have is that as a patient, he still complains of

chest pains, shortness of breath, which are subjective symptoms, and it is difficult at best in this instance to be sure whether or not they are actually pains of coronary disease, or whether they are what we call functional pains, chest wall pains.

Q. Woul you explain to the jury what you mean by functional pains as distinguished from pains with an organic source?

A. In this instance, we are interested in whether or not he has any chest pains which may be due to the lack of oxygen in the heart muscle, namely anginal; whether or not the pain in functional. By that I mean there is no organic basis for the pains in the sense that he has severe narrowing of the coronary arteries.

Q. Do I understand that by functional symptoms you mean symptoms that are brought about, for example, from psychological or psychiatric sources rather than symptoms which find their origin in some disability, some physical disability? Is that the general distinction between funcitnoal and organic?

A. That's what I am trying to say.

Q. In coming to your conclusions, I believe that you have diagnosed an acute myocardial infarction. May we take that by degrees.

What do you mean by acute?

A. We use three terms medically, acute, subacute and chronic. Acute means that it is a current, present, illness. In this illness it means a matter of hours or days.

Q. Acute does not mean severe. It means coming on very recently. Is that correct?

A. That is correct.

Q. The mild portion of your diagnosis—would you describe the degrees of severity?

A. Yes. In this instance, we are describing as best we can by that term the extent of the blood clot or the

clotting of the coronary artery which causes the damage to the heart muscle.

Q. I mean, there is a mild and then severe?

A. Mild and moderate and severe.

Q. This, then, was in the least order of severity. Is that correct, sir?

A. The least that we could diagnose.

Q. Yes, sir.

That was a doubtful diagnosis, too, was it not, Doctor?

A. Yes, sir.

Q. Would it not be altogether reasonable to assume that a heart condition of that mildness, he would recover from it within a matter of a few months?

A. Yes. That is true.

Q. When was the first electrocardiogram, Doctor, that you took following May 24, 1954, which did show a normal tracing?

A. I think I testified that the four tracings that were taken while he was a patient in the hospital could not be interpreted as showing definite evidence of heart disease.

The Court:

They are in evidence, I think, counselor.

Q. They are within a few days?

A. The first one was twenty-four hours after the one was taken in my office.

Q. When was the next series that were taken, Doctor, that would show a normal heart, normal tracings?

A. If I have these in order, there is June 21, 1954, July 5, 1954, August 23, 1954.

Q. Those were all normal, were they not, Doctor?

A. I have four others, if you are interested. The last of these was on the 29th of September, and in my opinion, in my interpretation, they were all interpreted as being within limits of normal.

Q. Is it not your opinion, Doctor, that he did make a routine and normal recovery within a matter of weeks from the time of May 24, 1954?

A. In this situation, it is difficult to evaluate his symptoms, as I have testified. If we were dealing with an individual who had always been perfectly well and had these symptoms, and we made such a diagnosis, he had no further chest pains, no fever, no shortness of breath and felt well, we would put this man back to work as soon as we thought it was entirely safe, which would be usually within a matter of three months. There have been too many complicating factors in this instance.

Q. Doctor, is it not true that the complicating factors in this case are the various and sundry subjective complaints that this patient presents to you?

A. Yes. That is true.

Q. Subjective complaints, Doctor, we mean complaints that are within the control of the patient rather than those which you can observe as an objective thing by seeing or by demonstrating on electrocardiograms or in some other manner? Is that not true?

A. Yes. In a general way that is true.

Q. Is it not true, Doctor, in coming to your diagnosis that th' man's subjective complaints—in other words, his story of what he claimed he was going through or what he claimed happened to him—played a great part in your diagnosis?

A. No. That is not true. I have always testified that there were several objective findings at the time of his hospital admission.

Q. Those findings, of course, were consistent with other illnesses, too?

A. Yes. That is true.

Q. There could be other things?

A. Yes.

Q. Which would cause the same type of symptoms?

A. Yes.

Q. For example, you suspected, or one of the doctors thought, it was a myositis rather than a heart condition?

A. That is true.

Q. Would you explain to the jury what a myositis is?

A. I explained to them that the doctor used the terms myositis or fibrositis to mean an acute rheumatism, so-called. Perhaps if I said an acute lumbago, instead of being back here (indicating), it involved the muscles of the chest and shoulder. That is what we meant by an acute fibrositis or myositis.

Q. Is it not true, Doctor, that a lot of people mistake these little pains that they have that are either from a myositis or in some cases some form of arthritis as being heart pains?

A. That is true.

Q. I gather, too, that in your coming to the conclusion that this man was disabled, that it was principally by reason of his anxiety; in other words, his mental outlook?

A. I would say that is true after the first three months. After all, I had a decision to make as the attending physician, and I made the decision that in my opinion he did have an acute myocardial infarction.

Q. I understand.

A. But as you have suggested, following a three-month period of observation, without any further objective findings, particularly with reference to the electrocardiograms, in my opinion if he had a small clot with a small patch on his heart, it was healed, and we have tried to reassure him as to that situation.

Q. Doctor, what I am getting at is this: I believe that it is your opinion, then, that his anxiety or the appearance of this mental outlook, this condition, is what is the disabling factor in your mind rather than any heart condition which he had?

A. That is correct.

Q. Now, then, Doctor, would not that be within the field of a psychiatrist?

A. Not entirely.

Q. It would certainly fall within the field of a psychiatrist, would it not?

A. Yes.

Q. Was it ever suggested that he see a psychiatrist?

A. I believe he has been seen by numerous psychiatrists.

Q. Has he seen any psychiatrist as an examining psychiatrist, to your knowledge; I mean, as his own psychiatrist rather than someone examing him for purposes of testifying or otherwise? As a treating psychiatrist, has he had any treating psychiatrist?

A. I am not sure. In my notes of July, 1955, we discussed one of the local psychiatrist.

Q. You do not know whether he went to him or not?

A. Well, my subsequent notes do not bear out the fact that he did. But, as I recall in conversation, I was beginning to feel this way: that he needed psychiatric help.

Q. Doctor, did you take into consideration the possibility that his anxiety neurosis or anxiety condition may have been affected by the pendency of claims against insurance companies?

A. Yes, indeed.

Q. You took into consideration the pendency of lawsuits having any effect on his outlook, temporary or otherwise?

A. Yes, I did.

Q. Do you not feel that that would have a great bearing upon his temporary outlook, until the disposition of such claims and losses?

A. I don't believe I am in position to answer that for this reason: that I have as a matter of record in my first observation of this man, and that means the hospital record, that in February of 1952 he was in an automobile accident.

Q. Yes, sir. Now, you have no information about an automobile accident, sir, except as to what came from the patient himself and appears in the hospital record, have you, sir?

A. I would qualify it this way: The admission to the hospital at the time or shortly thereafter was available to me as attending physician, and that's where I got most of my information. I also talked to the physician who took care of him, because it was of great interest to me to find out what type of injury he had or what kind of accident and so on, so that I might better evaluate his heart condition situation.

Q. What physician was that, sir?

A. Dr. A. R. Taylor. I believe he was the attending physician on that occasion.

Q. That brings me to my next question.

Is it not true that a great part of your diagnosis of this case was based on this man's history, that is, as to his having told you, or somebody else, that he had a concussion; his having told you that he had an electrocardiogram some years ago which showed that he had a myocardial infarction? Those things were all taken into consideration in your arriving at your conclusion?

A. Would you repeat that question, please.

Q. Yes, sir.

Is it not true that a great deal of your diagnosis was based—a great deal, I should say, of your consideration in coming to your diagnosis was based on the history of htis man; that is, history of a prior accident, a history of a prior myocardial infarction and so forth?

A. By "great deal," I would say, in answer to your question, yes. It was a big factor, which was intensified by my own observations of the patient.

Q. The one electrocardiogram that you took which showed a slight variation on May 24, 1954, was so slight that experts differed as to whether it was a significant change at all, did they not, sir?

A. I believe I stated that in my summary the electrocardiographic change per se was not diagnostic.

Q. That answers my question. Per se, the electrocardiographic changes were not diagnostic and, therefore, his personal and subjective symptoms to you became very, very important, did they not, sir; his relating to you that he had certain pains in certain places, and that he had them previously became very important to you in coming to your diagnosis?

A. I must qualify that. Do you mean by my diagnosis about his hospital admission, or about his subsequent course and his present condition?

Q. I am talking, sir, about this: That the E.K.G. was not, in your own words, a diagnostic change. In other words, the change was not significant enough to diagnose a heart condition.

A. That is correct.

Q. There were a couple of objective things which you saw which would be just as compatible with some other difficulty, some other disease, temporary or not?

A. Yes.

Q. The deciding factor, then, was the subjective symptoms that this man presented, was it not?

A. No In this sense, as I have already testified, when I see a man who has chest pain, fever, elevated white blood count, a questionable change in the electrocardiogram, a man of this age, a man of this build—he is a so-called coronary type—in my opinion, this man has

coronary sclerosis. Therefore, until somebody tells me differently, I am going to treat him and consider that he has an acute infarction. That is what I did.

Q. It is not, as you said on direct examination, under the circumstances a safe diagnosis to make?

A. That is correct.

Q. Refer to your hospital records. Do you have it there, Doctor?

A. I have it.

Q. You have the hospital record?

A. I have most of it.

Mr. Carey:

Do you have it, counselor?

Q. Doctor, I would like to hand you the hospital records which have been admitted in evidence. I would like you to refer to the sheet which is dated May 24, 1954. I presume you state this history because it is significant to you, and you are taking it into consideration in coming to a diagnosis. Is that not true, sir?

A. Are you talking about this sheet (indicating)?

Q. I believe that is it.

A. Yes, sir.

Q. That is the sheet that is signed by you, Doctor, is it not? It is signed at the bottom?

A. That is correct.

Q. Is not the history you put on a sheet like this—the reason for that is that you consider it significant to the particular case in coming to your diagnosis?

A. Yes, sir.

Q. You state here toward the end of this long paragraph, "He also"—referring, I take it, to Dr. Stokes—"He also states that he had a heart attack about four years ago but no electrocardiogram was taken for about three

months. He states that this electrocardiogram was interpreted as showing evidence of myocardial infarction."

Did he tell you where that electrocardiogram was taken four years prior to 1954?

A. That is not a part of this record. I believe that it was taken in Louisville.

Q. Louisville?

A. Yes.

Q. Was that the electrocardiogram that was taken by Dr. Woodford B. Troutman of Louisville, the heart specialist?

A. I am sure that he has taken a good many through the course of the years.

Q. Did Dr. Stokes tell you as part of his history so that you could come to a diagnosis that Dr. Woodford Troutman in Louisville diagnosed him as having had a heart attack from Dr. Troutman's E.K.G. examination?

A. Yes. That is part of the record.

Q. That is part of what Dr. Stokes told you so you could come to your correct diagnosis?

A. It was part of the history that is in there.

Q. You relied upon the truth of that statement in coming to your diagnosis, did you not?

A. Not necessarily.

Q. In part?

A. In part, yes.

Q. Doctor, you also relate in this same sheet that he sustained a cerebral concussion in February of 1952. You relied, I take it, on that as being part of a correct statement of his history?

A. I can't recall whether the patient told me that or whether, as I mentioned, Dr. Taylor told me about that. That was part of the past history which I incorporated in the record.

The Court:

The point is that you did rely upon that statement, whereever you got it?

The Witness:

That is correct.

Q. Doctor, referring now to a page, the first date of which is 5-26-54, marked on my copy as Page 4.

A. Yes.

Q. You consulted, I take it, with Dr. Roberts with respect to this man's condition, did you, sir?

A. Yes, sir.

Q. Is Dr. Roberts an internist, also?

A. Yes, sir.

Q. Does he specialize in heart conditions?

A. Anyone who limits himself to internal medicine is a heart specialist regarding the heart in this sense.

Q. It was Dr. Roberts' Opinion that he, Dr. Roberts, favored the diagnosis of the left cervical and upper thoracic myositis?

A. Yes. You have a complete record of his consultation.

Q. Yes, sir. I have the record before me, the hospital record such as you have.

A. Yes.

Q. Did he continue to disagree with you in his diagnosis, or did consultation cease at that point?

A. No. Perhaps I should say that Dr. Roberts and I practice together. We have our own building. We have a habit of seeing each other's patients, and as you can see he disagreed rather sharply with me at the time this was written. As the thing progressed, it was his opinion, and he wrote it in as an afterthought—this is his handwriting—could be wrong. History not typical

Left cervical shoulder myositis is definite. No Q wave in electrocardiogram, and ST and T changes while suggestive are not conclusive at this stage.

Q. I was coming to that, Doctor. By that he meant that he could be wrong, but in his opinion this was not history typical of myocardial infarction.

A. That's right.

Q. His pencil note was that it was a myositis. Is that correct, sir?

(No response.)

Q. Doctor, you never saw this man prior to May or April of 1954. What was the first date you ever saw this man in your life as far as you know as a doctor-patient?

A. May 24, 1954, when he came into the office.

Q. So, you are not in any position to express any opinion with respect to his condition of disability or lack of disability prior to that time?

A. That is correct.

Q. Did he mention to you at that time, Doctor, or some time during your conversations, that he wanted you to make medical reports to various insurance companies in connection with what he alleged was a total disability?

A. Yes, sir.

Q. You have stated, Doctor, that this man came to see you many times since his hospitalization in the latter part of May 1954?

A. Yes.

Q. What course of treatment, if any, did you give him?

A. It has been rather difficult to treat this patient. As I have stated, we have found it necessary to take numerous electrocardiograms in an effort to reassure him as to the present status of his coronary blood vessels, and each time we tried to reassure him as to the nature of these numerous symptoms that he always presents.

We tried various medications. To be specific, we tried to give hem Thorazine, which is a new drug, which is a drug that we give to calm people with tension states or anxiety states.

Q. Doctor, I do not want to interrupt you unduly.

A. You are asking me what I tried to do to help the man.

Q. All of these symptoms which you present were subjective throught this period, were they not?

A. With the exception of one episode, which I think is irrelevant. I had to make a house call. He had an acute renal colic. He had a kidney stone.

Q. And by subjective, again, we mean complaints which he relates to you. He is telling you that he is worried or suffering some pain or other. Those are subjectve things as against the things which you can find definitely as objective symptoms. Is that correct, sir?

A. That's right.

Mr. Carey:

I believe that is all, Doctor. Thank you very much.

Mr. Sams:

We would like to offer in evidence the electrocardiograms that were taken by Dr. Troutman, and I believe there is no objection to it on the part of the defendant.

The Court:

If there is no objection, they may be admitted.

(The documents referred to were received in evidence as Plaintiff's Exhibits #8 and #9, respectively).

Re-Direct Examination.

By Mr. Sams:

Q. Doctor, I hand you a piece of paper and ask you if you can tell what that is?

A. This is a photostatic copy of an electrocardiogram taken in May, 1946, in the office of D. W. B. Troutman, Louisville, Kentucky, on Dr. E. W. Stokes.

Q. Doctor, was that date that you have given us the approximate time that you testified when Dr. Stokes told you he was seen by Dr. Troutman and advised of some myocardial difficulty?

A. Well, in my history recorded in the hospital, I said four years ago, which would have made it 1950. In the consultation sheet that Dr. Roberts wrote, he stated that his first electrocardiograph was about six years ago. It was told that he had a heart attack, which was manifested by T waves. That information, to the best of my knowledge, was obtained through the patient.

Q. I did not understand. That information was elicited—

A. From the patient by Dr. Roberts.

Q. I ask you to take a look at this electrocardiogram which was taken by Dr. Troutman, and I would like to ask you some specific questions about it if you will study it for a minute. Is it possible to interpret that, Doctor, without having the original?

A. This photostatic copy is the equivalent of the original tracing.

Q. In other words, you can interpret that. Is that correct?

A. Yes, I think so.

Q. Can you tell me, Doctor, whether or not there is any irregularity in that?

A. Of course, this brings up a question that has not been discussed. It is extremely dangerous to try to interpret an electrocardiogram without seeing the patient. It is possible when changes are marked to make a definite diagnosis. Comparison with other tracings is always very helpful. I think if I were presented this tracing in 1946, as I am this minute, and asked to read it, I would say that it is suggestive of coronary disease. But there, again, there is nothing definite in it. I can compare it with tracings that we have now.

Q. Let me ask you this, Doctor: Referring to Lead I—I believe that is the top lead there—can you state whether or not the T waves are flattened?

A. The tracing taken in 1946 as compared to numerous tracings that I have on Dr. Stokes in my hand, the T waves are definitely flattened :that is, in this tracing that was taken in 1946.

Q. Let me ask you this, referring to Lead II and comparing it with the electrocardiograms that you have taken: Is there some notching and slurring of the RS segments?

Mr. Carey:

I object as leading, if the Court please.

The Court:

Sustained.

Q. Doctor, would you describe to us—

The Court:

What is indicative, if anything, on that cardiogram of coronary disease?

The Witness:
First, I should like to say—

Mr. Sams:
May I say one word. On medical, where I am attempting to bring out testimony, I think the Florida case law is that I have the right to lead him somewhat.

The Court:
Somewhat, but not very much.

Mr. Sams:
Judge, I just request that I be allowed—

The Court:
Unfortunately, even an expert witness—I mean, we are all human. In my opinion, an expert above all people should not be lead, because he should give his expert opinion purely on his own. You can picture a set of circumstances and ask him to answer it.

Mr. Sams:
The only thing I was asking him to do is to state whether or not certain things were or were not present on this particular piece of paper. It is subject to cross examination.

The Court:
We want to have an end to this. Let him give his opinion.

Mr. Sams:
All right, sir.

The Court:
We can ask him about every detail.

The Witness:
I have tried to generalize, sir.

Mr. Sams:
I would just like to ask this one final question.

Q. Doctor, can you state from looking at that, or is it your opinion from that electrocardiogram, that at that time, that is, the time it was taken there was some abnormality indicative of coronary damage or heart disease?

Mr. Carey:
Objected to as leading and repetitious.

The Court:
He said there was.
Suppose we frame it this way: What abnormality is there other than the one you have mentioned, if any?

Mr. Sams:
Perhaps I did not understand. If he already made the statement that it is abnormal, that is all I want.

The Court:
What did you say?

The Witness:
It would be suggestive of coronary sclerosis.
To clarify this, in 1946 it was customary to take only three or four leads. We now take twelve leads. The twelve leads give us more information than we could obtain from this. From this pattern, there are some of these changes and, again, these are highly technical, flattening of the T waves, slurring of the RS segments. Particularly in this extremity lead, flattening of the T

wave, it is suggestive. But I would like to emphasize that it is absolutely stupidity on the part of any doctor to try to make a diagnosis of coronary disease on the basis of an electrocardiogram or any other laboratory finding. It is a clinical diagnosis, which means that the doctor tries to evaluate history symptoms, laboratory findings, everything. Then he makes up his mind.

Re-Cross Examination.

By Mr. Carey:

Q. Doctor, I would like to ask you to take a look at the other electrocardiograms taken by Dr. Woodford Troutman in Louisville, Kentucky, marked October 4, 1954, attached to his deposition.

Mr. Sams:

That is in evidence, too, by the way.

A. The tracing dated 10-4-54 appears within normal limits to me. It is different from the tracing taken in May of 1946. I would say there is nothing to suggest coronary disease in the tracing taken October of 1954.

Q. If there had been coronary disease in October of 1946, it would have been present in 1954, would it not?

A. No. That is not true. I can only reemphasize that I can take a tracing on you this minute that will be absolutely normal. You can walk over there and have a heart attack and drop dead. The tracing, per se, does not diagnose coronary disease.

Q. But it tells of the presence of a damage to the heart tissue, for example, does it not? Is that one of its functions?

A. That is why we use it. But there, again, one can have a severe myocardial infarction and have a normal tracing

Q. Yes. But you find that the tracings of October 4, 1954, are entirely normal?

The Court:
He so said.

Mr. Carey:
That is correct.

The Witness:
Yes.

Mr. Carey:
That is all, Doctor.

Mr. Sams:
Thank you very much, Doctor. That is all I have.

The Court:
You may be excused.

(Whereupon, the witness was excused.)

The Court:
Call your next witness.

Therupon: A. R. TAYLOR, was called as a witness on behalf of the plaintiff and, after having been first duly sworn was examined and testified as follows:

Direct Examination.

By Mr. Sams:
Q. Would you state your name, please, sir.
A. Al Richard Taylor.

Q. Are you engaged in the practice of medicine?

A. I am.

Q. Where is that, Doctor?

A. Fort Lauderdale, Florida.

Q. Dr. Taylor, let me ask you, if you will, please, to speak a little louder. It is a little difficult to hear, and the end juror will have a little trouble.

Doctor, are you engaged in any specialized field of medicine?

A. General surgery.

Q. What has been your educational qualifications to prepare you for that specialty?

A. I graduated in 1935. I then had approximately four and a half years of residency leading to general surgery. That was in Baltimore and North Carolina, and the Army five and a half years, and I have practiced the rest of the time.

Q. I did not hear the last.

The Court:

He has been practicing ever since.

Doctor, let me suggest to you to speak out a little louder. Throw your voice a little bit more, because with these high ceilings, it is a little difficult for people to hear. I can hear, but back there it is a little difficult.

Q. Doctor, are you a member of any medical societies and associations in your local area or in the state or country?

A. Well, I belong to the AMA, Broward County Medical Association, North Broward Hospital staff, Fellow of the American College of Surgeons, Southeastern Surgery and many others.

Q. Dr. Taylor, have you had occasion in your practice of general surgery to see or treat or examine the plain-

tiff, Dr. Edgar W. Stokes, who sits right here (indicating)?

A. Yes, sir.

Q. Would you tell us when you first had the occasion to see him?

A. I first saw Dr. Stokes March 1, 1952, in the hospital, North Broward Hospital.

Q. Doctor, would you describe to the jury, please, sir, what his condition was at the time you first saw him. Who called you?

A. I was called in to see Dr. Stokes by a local physician, primarily to determine whether he needed surgery after an accident. I suppose the accident occurred a day or two before, but I saw him the day after he had been in the hospital.

Q. Would you describe to us, then, what his condition was at the time you saw him?

A. Well, Dr. Stokes was bruised all over, more in some places, particularly the head, the arms, the lower trunk and the thighs, his shin, heel, and he was pretty black and blue all over and swollen.

Q. Doctor, did Dr. Stokes give you a history? Did you elicit from him a history as to how he received those injuries that you described?

A. Yes. I got a history from Dr. Stokes to the effect that he had turned his car over in a canal and was treated locally in a hospital, I believe on Route 27, and had managed to get into our hospital the following day or two by various ways.

Q. Doctor, I hand you a set of hospital records which have been marked Plaintiff's Exhibit #2 and ask you to look at those and tell us whether or not you recognize those hospital records.

A. Yes, sir.

Q. From where are those hospital records, Doctor?

A. The Broward General Hospital, Fort Lauderdale, Florida.

Q. Doctor, would you state for the jury from those hospital records whether or not you find anything in those record to show any head injury?

A. No. I have looked over these records at the hospital, and I was surprised that there was not more mention in detail about the multiple abrasions and contusions or bruises. But it covers the situation very briefly by contusions and multiple hematoma. That is blood clots.

Q. Doctor, do you have an independent recollection of having seen Dr. Stokes? Do you remember seeing him? Can you recall the first time you saw him?

A. I remember seeing him very well the first time, yes.

Q. Will you tell us and the jury whether or not you saw any indication of any head injury?

A. Yes.

Q. That is from your independent recollection?

A. Yes. The forehead on the left side was discolored and bruised and swollen and maybe a little abrased. But it was pretty angry looking, that side of the face and head.

Q. Doctor, what was your diagnosis of Dr. Stokes' condition from your initial examination and from the history that you received from him at that time?

A. Well, I felt that he could have definitely had a severe accident as he quoted me, and he does not remember at all. He was unconscious, it seems, for minutes, and in his story, he didn't remember how he got out of the car and out of the water. But he managed in some way. It was rainy and a dark night, and he went—the last he remembers was when he was on the road and the car just left, and then he remembered being on the bank after that.

Q. What was your diagnosis of his condition, Doctor, based on your examination?

A. Well, shock, and the trouble in the legs, or the other bad bruises. It was the observation at that time to watch closely and decide as his progress would determine. But I would say shock and contusions, and from the head and his history of being unconscious, you would have to say concussion, brain concussion.

Mr. Carey:
I believe it states no diagnosis.

The Court:
Yes. He asked for diagnosis.
You have your diagnosis there, have you not, Doctor?

The Witness:
Yes.

The Court:
He has his diagnosis in his hand.

Mr. Sams:
I think it is the hospital record.

Q. Do you have your initial diagnosis, Doctor?
A. I have a lot of records in here, in the office, that are not in the hospital records.
Q. Refer to your office records, Doctor, and can you tell us from your office records what your initial diagnosis was?
A. Shock, contusion lower abdomen, thighs, legs, abrasions, multiple, thrombophlebitis, left saphenous system, bilateral, deep saphenous veins—

Mr. Carey:
Just a moment, Doctor. I do not believe there is any question pending.

Mr. Sams:
All right. I will ask you another question.

The Court:
Do not volunteer.

Q. Do you have your report of December 10, 1954? Would you refer to your records and tell me whether you do or not?

The Court:
That is two years and a half after the accident. Is that right?

Mr. Sams:
Yes, sir, but in that he has a complete diagnosis, and I think it would be simpler to ask him about that than go through all his records. This is what he read from in a deposition.

Q. Do you have that with you, Doctor?

Mr. Carey:
I have to object to any conclusion drawn two and a half years afterwards.

The Court:
I do not think that would be pertinent to this accident. If you want to ask him what his condition was two and a half years after, it would be something else. But his diagnosis at the time of the accident, I think, would be pertinent.

The Witness:
If the Court will permit, I was called in consultation particularly with surgery in view, and the medical doctor

would have treated the concussion as long as it was not surgery.

The Court:
I think he probably has that testimony.

Mr. Sams:
Judge, I missed that.

The Court:
I sustain the objection on the ground his diagnosis two and a half years later—

Mr. Sams:
But the letter written two and a half years later makes reference to the first visit that he ever made to the hospital. That is what he is talking about, and to all the things that he did all the way through.

The Court:
It would still be hearsay, in my opinion, as far as the diagnosis was concerned. A diagnosis is that which is made at the time.

Mr. Sams:
But this diagnosis that was written in 1954 was the diagnosis he made in 1952, and it is clear from the report.

The Court:
I think we have the diagnosis in 1952. If he has another diagnosis contradictory in 1954, let us bring it out.
What is the hospital diagnosis in 1952? You wrote a diagnosis on admission, did you not?

The Witness:
Yes, I wrote a diagnosis.

The Court:
What did you say?

The Witness:
It was not my chart. My opinion was a consultation.

The Court:
What did you say?

The Witness:
On the consultation sheet, I was concerned with the phlebitis, contusions, multiple hematoma.

The Court:
That is bruises and clots?

The Witness:
Yes. A contusion could be a concussion on the head.

The Court:
It could be.

The Witness:
It results in the brain shaking.

Mr. Carey:
I move that it be stricken.

The Court:
All right. I will strike it.

Mr. Sams:
Judge, I do not want to argue this unduly, but I would like Your Honor—

The Court:
I am not going to take his two and a half year old letter into this record.

Mr. Sams:
But he wrote the letter himself.

The Court:
I do not care if he wrote it himself or I wrote it. It is still two and a half years after the accident. We want to know what diagnosis was made at the time. If he wants to change his opinion two and a half years—

Mr. Sams:
I am not trying to get him to change it. This is a concise statement.

The Court:
It is hearsay just as much as if I wrote it as far as what happened then.

Mr. Sams:
He was the one who examined him.

The Court:
He can testify as to what he found when he examined, but not going to—

Mr. Sams:
He cannot refer to any notes he made?

The Court:
No, sir, not two and a half years later.

Mr. Sams:
I am sorry, Judge. May I ask him to repeat—

The Court:
He can make his notes when a man comes to see him on a certain situation. That is admissible for certain reasons. After that, no. Those notes are no more admissible than if I made them.

Mr. Sams:
The time element being what makes them inadmissible?

The Court:
That is right.

Mr. Sams:
If that is Your Honor's ruling, I certainly do not quarrel with it.

The Court:
I want to explain to counsel so you realize there is a definite rule, in my opinion.

Mr. Sams:
All right, sir. I am not arguing with Your Honor.

The Court:
If you want to ask him what his condition was two and a half years later, that is fine.

Q. How long did you treat Dr. Stokes; over what period of time?

A. Well, I treated him all of the five days from the 29th to the 5th of March that he was in the hospital. I observed him with reference to the possibility of emergency surgery because of blood clots. I didn't see the accident. I didn't see him in the other city.

Q. I understand that.

A. And I didn't know about the head injury except what I could see, because that was two, three days later that I saw him.

Q. I understand that, Doctor. That was the time you treated him over a five-day period?

A. That's right.

Q. For what reason was it that on December 10, 1954, you reduced to writing certain findings that you made two and a half years before? Why was the time interval in there?

A. Well, I believe it was because I asked for six-month evaluations, and it began to be needed more often than that. He wasn't progressing, or he was still in a condition that didn't seem like it was clearing up or he was getting well.

Mr. Carey:

I object to the question and move to strike the answer as to why he wrote some letter two years afterwards.

The Court:

I suppose the patient wanted it for certain purposes. Is that not true?

The Witness:

I will try to find that letter.

Mr. Carey:

It would be self-serving and hearsay. I think the inquiry is without foundation.

The Court:
Let us pass on.

Q. The diagnosis that you have given us, which was your initial diagnosis, was based on things you observed yourself on Dr. Stokes at that time?
A. That's right.

Mr. Sams:
Is it my understanding you objected to it? I do not know whether it was sustained or not.

Q. Did you diagnose a brain concussion?
A. I have in writing here on December 10, 1954—

Mr. Carey:
Just a moment.

The Court:
We will strike that. Answer the question yes or no. You should answer that question.

Mr. Sams:
Do not refer to anything after that.

The Court:
You take that letter of 1954 and just cover it up. Let us not hear any more about it.
Go on and ask any questions you want.

Q. It is my understanding you elicited a history of unconsciousness?
A. I beg your pardon.
Q. You elicited a history of unconsciousness?

Mr. Carey:
That is objected to as leading, if the Court please.

The Court:
He already stated that. That is repetitious. I will sustain the objection. He said he was unconscious, and if you are unconscious, you have a slight concussion.

Mr. Sams:
What I was trying to get at is this—

The Court:
Is that correct, sir?

The Witness:
Yes, sir, that is correct.

The Court:
If you get knocked out in a prize fight or anything, you have a slight concussion.

Q. You also found contusions and bruises on the forehead?
A. Yes.
Q. Doctor, have you had occasion to see and treat or examine Dr. Stokes since he was released from the hospital?
A. Yes. I have seen him several times each year.
Q. What was the occasion for that? Was that for treatment?

Mr. Carey:
That is objected to as leading, if the Court please.

The Court:
That is overruled, because that part of it is quite all right.

A. Yes, sir, that was for treatment. He is still worried about those veins in the leg, and he still believes by tomorrow one of them will break or give him trouble. He is still worried about his headaches, so he comes to see me when he comes to town.

Q. Dr. Taylor, based on your examination of Dr. Stokes, your original examination, the course of treatment and all the subsequent examinations that you have made, have you arrived at an opinion as to whether or not Dr. Stokes is suffering from any disability?

Mr. Carey:
If the Court please, there is no relation here of time. We do not even know when the last time was.

Mr. Sams:
I will tie that down.

Q. Do you presently have any opinion as to whether or not Dr. Stokes is suffering from any disability; that is, at the present time?

A. Yes, I have an opinion.

Q. Would you state to this jury whether or not in your opinion at the present time he is or is not disabled?

A. I would say he is disabled.

Mr. Carey:
I object to the question as I objected previously.

The Court:

For the same reason I will overrule the objection and reserve the right for you to move to strike in case it is not connected.

Q. Dr. Taylor, will you state for us, please, to what extent in your opinion is he disabled?

A. He is disabled permanently to practice medicine, in my opinion. I don't know about other things.

Q. What do you mean you do not know about other things? Can you be more specific?

Mr. Carey:

I wish to make a further objection to this question as well as the previous question. Those questions are put to the doctor as to whether he is disabled, which invades the province of the jury. That is the reason they are here.

The Court:

But the doctor has an opinion, and they can resolve that problem as we go along. Counsel is developing now the various disability that might occur.

Q. Could you be more specific in saying in your opinion he is disabled from the practice of medicine, but you do not know about other things?

A. Well, medicine is too serious a profession for a man that is confused or anxious or emotionally unstable to try to follow.

Q. Would you tell us what the factors are that you take into consideration in arriving at your conclusion or opinion that Dr. Stokes is disabled.

A. It has been four years of observation. I have seen him lots of times in those four years.

Q. I mean the symptoms, Doctor.

A. Well, there are a lot of subjective symptoms, plenty of them, and they are just as real to him, I suppose. The pains we have to check—in other words, that is hard. But knowing the objective things that I watched and observed from the very beginning, and the changes, I feel like some of that would be objective.

Mr. Sams:

I believe that is all I have.

The Court:

Counselor, I did not mean to shut you off from asking him about the condition at any time.

Mr. Sams:

No, sir.

The Court:

When he made a revised estimate of his injuries at any other time. I did shut you off because that is not the usual course.

Mr. Sams:

I thought he distinctly stated them.

The Court:

I do not want you to be misled.

Mr. Sams:

No, sir. I appreciate that.

Mr. Carey:

I wish to move to strike the testimony with respect to the doctor's opinion as to disability, as well as the testimony of Dr. Dornberger.

The Court:

I think the testimony has value. It does not cover the whole field of the question in this case, but it covers part of the field.

Mr. Carey:

Very well, sir.

Cross Examination.

By Mr. Carey:

Q. Doctor, your first visit to this man was on March 1, 1952?

A. Yes, sir.

Q. I wonder if you would take a look at your notes and see if that first visit was not March 4, 1952.

A. Well, the date could be wrong. I have it March 1 on the consultation sheet from the hospital records. It could have been the 4th, but if I remember, I believe it was March 1.

Mr. Carey:

I would like this marked for identification.

The Court:

Defendant's Exhibit #1 for identification.

(The document referred to was marked for identification as Defendant's Exhibit #1.)

Mr. Carey:

I would like this marked for identification.

The Court:

Defendant's Exhibit #2 for identification.

(The document referred to was marked for identification as Defendant's Exhibit #2.)

Q. From your notes you believe it was March 1 rather than March 4, 1952?

A. It may be on the nurses' notes. That will be specific. Let us see if it is.

March 1, the nurse wrote "Dr. Taylor here."

Q. Now, Doctor, were you Dr. Stokes' attending physician, or was Dr. R. J. Patterson?

A. Dr. Patterson, in Hollywood.

Q. Is Dr. Patterson a surgeon or general practitioner?

A. General practitioner.

Q. You examined this man for his injuries at the hospital, did you not?

A. Yes, sir.

Q. Your diagnosis at the time was that of shock, contusions of the lower abdomen, thighs and legs and abrasions, multiple, and thrombophlebitis, left saphenous system, bilateral, and deep saphenous veins. Is that correct?

A. That's right.

Q. You did not diagnose his condition as incorporating or having or including a concussion, did you, Doctor?

A. I didn't see him with one, no. I saw him two or three days after the accident.

Q. There is no mention in the hospital records anywhere of any injury to his head or any bruise to his forehead, is there, Doctor?

A. Except included under the multiple, when they were not specific. He had bruises over so much of his body, that we made it a general term.

Q. There is no mention in the hospital of any suggestion of a concussion in the hospital records, is there?

A. I don't think so. I looked for it and didn't see it.

Q. The chief complaints as shown in the hospital record—do you have a copy there with you, sir?

A. This is Dr. Patterson's chart.

Q. Yes, sir.

The chief complaints there were that he was in an auto wreck twenty-four hours prior to admission, struck across the lower abdomen and upper thighs, probably by steering wheel. Is that not right, sir?

A. Yes, sir, that is correct. That is what is on here.

Q. Is this your signature on the face sheet of the record above Dr. Patterson's, or is that just printed in?

A. It does not look like my writing. The record room could put that in.

Q. I do not think it looks like your writing either.

A. It is better than mine.

Q. I show you Defendant's Exhibit #1 for identification, being a report submitted, and ask you if that is your signature.

A. That is my authorized signature, the office girl. You will probably find about the same one on all of these.

Q. Yes, sir.

I show you now Defendant's Exhibit #2 for identification and ask you if that is your signature at the bottom.

A. Yes. That is the authorized one.

Q. Is it your signature?

A. No, sir.

Q. You, however, made up or approved both these forms as being your diagnosis, and the report to the insurance company of the condition of this man, Dr. Stokes, did you not?

A. I will have to say yes to that.

Q. I will ask you to read the diagnosis. We will not take up the jury's time unnecessarily. Does that diagnosis there include anywhere any mention of a concussion?

A. No, sir.

Q. On either of those forms?

A. No, sir.

Q. One of the forms is dated August 26, and the other appears to be November 17. This accident happened in February of 1952.

A. It summarizes it there because I believe it.

Q. These were your summaries, were they not, of this man's condition?

A. No. That is very brief.

Q. If a concussion was sustained by this man, that would probably be as serious as any part of the injuries that were sustained, would it not?

A. That would be probably the worst, but the emergency part was the blood clot.

Q. You certainly would show to the insurance company the worst part of his injuries, would you not? You would not leave it out?

A. Well, you are making me the attending physician. I was consulted.

Q. Sir, these are forms signed by you or containing your authorized signature, are they not?

A. That's right, yes, sir.

Q. They would include the more serious of the man's injuries, would they not?

A. They should, yes.

Q. The first one on August 26, 1952—

The Court:

They will speak for themselves.

Mr. Carey:

All right, sir.

The Court:
Unless you want to offer them out of turn and counsel is agreeable.

Mr. Sams:
It is all right with me.

Mr. Carey:
I am willing to have them go in without prejudice to my position on any motion I may make.

The Court:
Do you want to offer them out of turn?

Mr. Carey:
If that is agreeable without any prejudice.

Mr. Sams:
I have no objection to putting them in, in either his case or mine. I have not seen them.

The Court:
They will be admitted.

(The documents referred to were received in evidence as Plaintiff's Exhibit #10 and #11, respectively.)

Q. Doctor, you discharged Dr. Stokes on September 10, 1952, did you not?
A. That was the first date I anticipated we could make an evaluation on the maximum benifits which should be reached, but it does not always work out that way.
Q. Doctor, this form is dated November 17. It is stamped as received by the company December 23, 1952.

So, it relates back. In other words, it was telling about something that had already happened. Does it not say under Paragraph 10, "Patient was discharged from treatment here and returned home September 10, 1952. At that time progress was good and satisfactory." Is that correct, sir?

A. That is all correct. It could be reopened, probably, and it seemed to me it never has been closed, actually, because I have been seeing him ever since.

Q. I am not asking you to argue the case. I am asking if you did not discharge him September 10, 1952.

A. I wrote it down that way.

Q. You did discharge him on that date, did you not?

A. You can't make it cut and dried like that.

The Court:

What he means, Doctor, is did you discharge him at that time?

The Witness:

Yes, sir.

The Court:

You could change your mind later on.

He answered the question.

Mr. Carey:

Thank you.

Q. I take it, Doctor, that your opinion that this man is disabled is then based entirely on what you have related as being subjective complaints, that is, his mental outlook and his coming in being worried about his phlebitis, if there is one, and that sort of thing. Is that right?

A. Well, the word "entirely," is a big word. I don't like to agree or disagree with that word, because there are some objective things.

Q. Would you not say, Doctor, that the pendency of claims, four or five of them, with different companies, would have a direct bearing on his outlook in that respect?

Mr. Sams:
Your Honor, I would like to object.

The Court:
Do not go into that. You can ask him about the pendency of litigation and claims. The jury will ignore any statement that there are a number of companies involved in any claim. I am sure counsel inadvertently said that.

Q. Doctor would not the pendency of a claim against the company with respect to the very thing we are talking about, as to whether he is disabled or not, the pendency of litigation, would that not have a direct bearing on the mental outlook of the patient?

A. I don't think my opinion would be worth anything on that.

The Court:
In other words, you are unable to answer that?

The Witness:
That's right.

Q. Have you, Doctor, observed patients preparatory to litigation in their nervous state and a state of suspense in connection with their injuries, who have had a very appreciable degree of recovery after the litigation is over? I mean sincerely—

A. Yes, sir, I have, both ways. I have been right sometimes and wrong sometimes.

Q. That is right, sir.

Then it would be a factor, would it not, in considering the mental outlook of the person as to whether litigation was pending or not?

Mr. Sams:

I object to the question on the ground that the doctor already stated he is not capable of answering it. He is not qualified to answer.

The Court:

He said he does not think he is qualified, but he has answered just generally speaking. I presume he is answering like a layman would answer. He is not betting his professional reputation on that.

Q. Have you taken into consideration, Doctor, too, that this man has been a practicing psychiatrist for a number of years and would know what symptoms to elicit if he wished to be that kind of a person?

A. No, sir. I didn't take that into consideration.

Q. How long had you known this man?

A. I met him in the hospital.

Q. You had never known him before 1952, then, had you, sir?

A. No, sir.

Mr. Carey:

That is all, sir.

The Court:

Any questions?

Mr. Sams:

I would like again to reoffer in light of putting in evidence the two reports to the company the complete diagnosis by Dr. Taylor in his report of 1954.

The Court:

To the company?

Mr. Sams:

I do not know to whom it was.

Mr. Carey:

I object.

The Court:

It would have no bearing here. You can ask him what his condition was in 1954, if you like.

Mr. Carey:

It has not changed his diagnosis.

The Court:

Ask him if he changed his diagnosis.

Mr. Sams:

No, sir, he has not. But he asked him the question in introducing the forms whether or not it showed anything about concussion.

The Court:

Ask him his appraisal of the man's condition at the time or at any subsequent time.

Mr. Sams:

I do not think it would be objectionable in light of the introduction.

Re-Direct Examination.

By Mr. Sams:

Q. Doctor, have you rendered a report subsequent to the two reports which Mr. Carey showed you which you have showed a brain concussion in your report?

Mr. Carey:

That is objected to as hearsay.

The Court:

I will sustain the objection on the ground it is leading.

Have you made a further examination of the doctor since you made these two reports?

The Witness:

Yes, sir.

Q. In the subsequent examination was your diagnosis different than the diagnosis made in the two reports that Mr. Carey showed you where you did not show a concussion?

A. Would it be wrong for me to bring it up to date and make the diagnosis and things I think and thought, and still think, Dr. Stokes has?

Q. Would you do that. You do not even have to refer to any notes. Do it for us from your own independent recollection of what you saw at the time. Tell us just what your initial diagnosis was and what your diagnosis is now.

A. You have the initial diagnosis.

Q. What is the diagnosis today?

A. The diagnosis today would be multiple contusions forehead, left side of face, arms, pit of the stomach or epigastric, lower abdomen, things, right shin, right heel,

shock, phlebitis, bilateral saphenous and greater saphenous veins, possible brain concussion, moderately severe.

Mr. Carey:

I move that be stricken, if the Court please, "possible concussion," unless he testifies that his diagnosis is with reasonable medical certainty.

The Court:

That is all right from a diagnosis. It may be or may not be so, but there is some indication that it might be. Is that right?

The Witness:

Yes, sir. I wasn't there, as I told the Court before, and the symptoms afterward could have been from shock or from concussion or from other things. I wouldn't be able to say concussion. I could have if I would have been at Moore Haven.

The Court:

Phlebitis was an antecedent condition in this particular matter?

The Witness:

The result of an accident?

Q. Was it the result of an accident or a result of something that happened before the accident?

The Witness:

It was present when I saw him, so I can say—

The Court:

It was not the result of an accident, though, as far as you know?

The Witness:

Well, the thrombophlebitis must have been because of all the swelling and discoloration; that is, blood clots in the veins.

The Court:

Yes. Does that still persist? Is that still present?

The Witness:

Yes, sir. No. It is cleared up.

The Court:

Cleared up?

The Witness:

Yes.

Q. How large was the bruised area on the head about which you have spoken?

A. The outer forehead and left cheek and the eye.

Q. Can you put your hand to the area where it was?

A. Yes (indicating.)

Q. How far did that extend over?

A. It went back toward the ear. But it was evidently something he contacted on the forehead.

Mr. Sams:

I believe that is all.

Re-Cross Examination.

By Mr. Carey:

Q. Doctor, when was the first time you ever gave a diagnosis of concussion or mentioned anywhere about this bruise on the head.

The Court:

Wait a minute. You had your cross examination. If you want to object to anything new which he has brought out—

Mr. Carey:

He now gives a new diagnosis and states he changed his mind as to possible concussion in his original diagnosis. That orignial diagnosis did not include that. I want to know why he changed his mind.

The Court:

You can ask him that queston.

The Witness:

I said multiple contusions and multiple hematoma. That answers the question.

Q. My question is, Doctor, when was the first time you mentioned to anyone in writing or otherwise that this was an injury to the head and possible concussion of the brain?

A. Not the word "concussion," but I did mention multiple contusions.

The Court:

I take it, Doctor, it was December of 1954.

The Witness:

March, 1952. Yes, December 10, 1954. Probably that was it.

Q. That would be your answer, the first time you did mention it?

A. The first time I have it in writing; not the first time I said it.

Q. The first time you ever made any report of it?

A. Yes, I suppose.

Q. You were with this man's attending physician?

A. Dr. Patterson, while he was in Hollywood. Then he moved to Fort Lauderdale, and I followed the case.

Q. He asked you to make out a number of reports, did he not, with respect to his condition?

A. Yes, sir.

Q. You knew he was contending he was totally and permanently diabled as a result of this accident, did you not?

A. Well, I thought so.

Q. You knew he was contending so, did you not, and was seeking benefits for it?

A. For the time until he got well, yes.

Q. Through all of these first reports you made no mention of a concussion of the brain?

A. No.

Mr. Carey:

That is all.

Mr. Sams:

I have something right on that.

The Court:

That is the evil of it. From now on, there will be direct, cross and redirect. You both object if the man gets out on his particular side of the fense.

Mr. Sams:

I am perfectly willing to do that, but he came back and asked him some specific questions, and I would like to question him again.

Re-Direct Examination.

By Mr. Sams:

Q. Doctor, were you asked in 1954 to write a written review of everything in this particular case?

A. It sounds like that.

Mr. Carey:

I object, if the Court please.

The Court:

It is immaterial. I will sustain it.

Mr. Sams:

Judge, may I say just one thing. He asked a question as to the first time he ever said he had a concussion, trying to show that he never said it before. The doctor said it in writing in 1954.

The Court:

The doctor answered that the best knowledge he put it in writing was that date. I asked the question.

Mr. Sams:

I want to show why he did at that particular time.

The Court:
Does that have anything to do with this lawsuit? It is immaterial.

Mr. Sams:
All right. I have no further questions.

The Court:
The thing is what is wrong with this man? That is material.

Mr. Sams:
He already stated that. That is all, Doctor.

(Whereupon, the witness was excused.)

Mr. Sams:
Before we call the next witness, I would like to argue to your Honor about this.

The Court:
The jury will be excused.

(Whereupon, the jury withdrew from the Courtroom.)

Mr. Sams:
Judge, the next witness we are going to call or would like to call would be Dr. LeDrew. We do not want to call Dr. LeDrew as our witness. Some of the things he will say will be things we need to develop in our case. We would like to call him under the federal rule that allows us to call a hostile or adverse party, hostile witness or adverse party.

I appreciate that the general rule is that you call a witness, and if he develops as a hostile witness, then you

can call him as a hostile witness. If it does not happen to develop that way, you must just be stuck with his testimony.

The Court:

We do not want to do that in advance.

Mr. Sams:

But under certain circumstances, the Courts have allowed calling witnesses as hostile witnesses where it is obvious.

Dr. LeDrew examined Dr. Stokes as the examining physician for the Continental Casualty Company under the terms of the policy. That alone does not make him hostile.

We took his disposition, and the deposition itself is quite lengthy. In the deposition it was developed that Dr. LeDrew's initial diagnosis had been one thing, but it had changed because of his own personal opinion about certain things Mr. Carey told him prior to the deposition, such as the fact that Dr. Stokes was attempting to collect a certain amount of insurance and so forth and so on, which would indicate he was hostile to our position.

During the course of the deposition, this interrogation took place, and Dr. LeDrew testified as follows: I asked him to read—

Mr. Carey:

What page?

Mr. Sams:

Page 36.

I asked Dr. LeDrew to read certain documents to me that he had in his file. He said, "You would not be able to read them."

Then, apparently, there was some off-the-record discussion between counsel and Mr. Sams.

By Mr. Sams:

Do you have any objection to his doing that?

Then Mr. Carey:

"Yes, I object to it."

Then the witness said, "I must be guided by Mr. Purtell, I suppose."

Mr. Purtell was an agent for the company.

The witness said, "You represent Mr. Purtell, do you not?" He was addressing his remarks to Mr. Carey. Mr. Carey said, "I represent the Continental Casualty Company, the company involved."

I said, "He does not represent you, does he, Doctor?"

The doctor answered, "He was the one that employed me."

Then the following was the testimony:

"Question:

In other words—"

I never finished it. The doctor said, "I feel I should be loyal to the person employing me."

"Question:

Is that correct?

"Answer:
That is correct.
"Question:
You are supposed—
"Answer:
Is that proper procedure, being loyal to the person who employed you?

"Question:
I should like to see them, but it is all right, Doctor." I said something of that nature.

Dr. LeDrew's attitude in this whole deposition was one of hostility all the way through. He would not read records. He did turn it over to us along with some notes Mr. Carey had given him prior to the taking of the deposition.

I think just from that alone there is no question that Dr. LeDrew is a hostile witness.

There is also no question that some of Dr. LeDrew's testimony will be helpful, at least helpful in developing the facts of the case. I request the Court to allow me to call Dr. LeDrew as a hostile witness or, if the Court does not feel it can do that, because of the importance of this, to call Dr. LeDrew as the Court's witness and allow me to cross examine him.

The Court:
I cannot call him as a hostile witness, and I am not yet prepared to call him as a Court's witness. He may develop hostility.

Mr. Carey:
This was with respect to whether he should produce certain documents, Your Honor.

The Court:
I have seen him on the stand in other matters, and I am pretty sure he is a careful fellow.

Mr. Sams:
There is no question about that.

The Court:
I do not think he would testify one way or the other.

Mr. Sams:
I have an important decision to make. May I ask Mr. Carey to tell me whether or not he is going to call Dr. LeDrew.

Mr. Carey:
I do not think I am obliged to say so at this stage.

Mr. Sams:
I would request that in fairness.

The Court:
Yes. I think we should exchange witnesses. Do you intend to call him?

Mr. Carey:
I do not intend to call him, Your Honor.

Mr. Sams:
Then I will have to call him.

The Court:
I do not think the fact that a man testifies in your favor and then against you is injurious to your case. That is a good deal like life.

Mr. Sams:
I would agree with that a hundred per cent if it were not for the fact—

The Court:
If he becomes hostile, you can then move that he become a Court's witness and proceed as a hostile witness.

Mr. Carey:
I might say he was asked to make an examination of this man for Continental Casualty Company, not for Continental Assurance Company, the company that is the defendant in this lawsuit.

The Court:
They are sister companies.

Mr. Carey:
Yes, affiliated.

Mr. Sams:
I disagree with that. I have some letters addressed to me—

The Court:
I say, Mr. Sams, it would not make any difference.

Mr. Sams:
I have a letter from Mr. Purtell telling me to get in touch with Dr. Stokes.

The Court:
Counsel agrees that they are related companies.

Mr. Sams:
I did not give it any thought at the time.

Mr. Carey:

While the jury is out, Your Honor, I should like to again ask that the Court strike the testimony of Dr. Taylor and the previous doctor, Dr. Dornberger, with respect to the disability of the plaintiff.

In the first place, it was not brought out wherein the disability lie; that is, what the source of the disability was.

In the second place, it was not brought out with any degree of certainty what they meant he was disabled from doing. Thirdly, it war not specified as to when any such disability, if any, began and when it ceased. The question was merely as to whether he is now disabled.

The Court:

I think their testimony, like all other testimony, is not complete. But it is testimony upon which you can base a conclusion. One of them said he is certainly disabled from the practice of medicine and probably not other things. The other said he is completely disabled.

Mr. Carey:

That does not give us any basis with respect to whether these people are to make a finding as to this lawsuit.

The Court:

Counselor, that is up to you whether they make a finding. That is evidence that would add up with other evidence, perhaps, that would permit them to make a finding, after they listen to your witnesses.

Mr. Carey:

May I just make one observation?

The Court:
And your very capable argument.

Mr. Carey:
This action, Judge, is for indemnity which is now accrued, not to determine whether he is disabled or not. It is to determine whether during the months since September, 1952, he was disabled.

The Court:
He kept coming in frequently. He had heart pains. That is actually what they testified, as near as I can understand, and he has a fear complex which is serious. That would be my impression if I were a juror.

Mr. Carey:
My point is that it is his present condition they delved into and not to the period of time during which the jury has to make a finding.

The Court:
No. Find out what they said when he came in. For instance, one of them said he is not disabled. Both tell about him coming in frequently and complaining of all sorts of things.

Mr. Carey:
The testimony with respect to disability is not whether he was disabled since September, 1952.

The Court:
Disability is not always by conclusion, but by facts. The man is unable to work because he could not walk. You would not need any disability to say that he could not pursue an active occupation. You just have testi-

mony he was unable to walk. If these people say this man is obsessed with a great fear he is going to die, that he has a lot of ailments and is very nervous, that might be grounds for a jury to say that he has been disabled. It might also be grounds, on the other hand, to say that he just suffers from a fear complex and would be cured if he did not have these insurance companies on his neck.

Mr. Carey:
Or if he was not trying to get at the insurance companies unjustly.

The Court:
It works both ways.
Let us not go into that.

Mr. Carey:
I think it is also grounds for a directed verdict.

The Court:
It might be.

Mr. Sams:
Judge, Mr. Carey stated to me at noontime, and I was in agreement, that we might request that we adjourn a half hour early today. I think we can finish some time tomorrow.

The Court:
We will adjourn at five o'clock. Will that suit you?

Mr. Carey:
That will help, Judge.

The Court:

Try to get the matters real concise tomorrow. You do not gain anything by going into too great detail.

This is a simple case, whether this man is suffering from a disability that removes him from the field of his ordinary endeavor, and a doctor ought to be able to testify to that almost bang, bang, bang.

Mr. Sams:

This next doctor may be a little more difficult on that score.

(Whereupon, the jury returned to the Courtroom.)

The Court:

Do you each waive the polling of the jury and consent they are present?

Mr. Sams:

Yes, sir.

Mr. Carey:

Yes, sir.

The Court:

You may proceed.

Mr. Sams:

The next witness the plaintiff will call will be Dr. Frederick LeDrew.

Thereupon: FREDERICK LEDREW, was called as a witness on behalf of the plaintiff and, after having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Sams:

Q. Dr. Ledrew, I might ask you, please, to speak as loudly as you can, because it is sometimes difficult to hear.

Would you state your name.

A. Frederick LeDrew, L-e-D-r-e-w.

Q. Doctor, are you engaged in the practice of medicine in Dade County, Florida?

A. Yes, sir.

Q. What address?

A. At 411 Huntington Building, Miami.

Q. That is Miami, Florida?

A. Yes.

Q. Doctor, are you engaged in any specialized field in the practice of medicine?

A. Yes. I specialize in the field of psychiatry.

Q. Would you tell us just briefly what your educational qualifications have been to prepare you for that specialty.

A. Well, I graduated in 1919 with a B.A. degree; secured an M.A. degree in 1920 and an M.D. degree in 1926.

I became a Diplomate of the American Board of Psychiatry and Neurology in 1934.

During the war, I was a lieutenant colonel in charge of the neuro-psychiatric section at the First Air Force.

I am at present one of the clinical professors of psychiatry at the University of Miami Medical School.

Q. I presume, Doctor, that you are a member of the staff of a majority of the hospitals here in Dade County?

A. Yes, sir, I am.

Q. Doctor, did you have an occasion to examine Dr. Edgar W. Stokes, who is sitting right here, the plaintiff?

A. Yes, sir, I did.

Q. Dr. LeDrew, who employed you to make that examination?

A. May I refer to my notes, sir?

The Court:

Yes, to refresh your memory, you may do so.

Q. If you would just answer my specific questions.

The Court:

Who employed you?

Q. Who employed you to make that examination?

A. The insurance company.

Q. Was that the Continental Assurance Company?

A. That was the Continental Casualty Company.

Q. Did Dr. Stokes come over to your office for an examination?

A. Yes, sir.

Q. How many times did you see Dr. Stokes?

A. Just once.

Q. At the conclusion of your examination, did you render a report to the insurance company?

A. Yes, sir, I did.

Q. Dr. LeDrew, I will just ask you this one question: Did you report to the insurance company at that time that in your opinion Dr. Stokes was disabled from working?

A. I believe I said at that time that in my opinion he was unable to work, at the time I examined him.

Q. You have never examined him subsequent to that time, have you, Doctor?

A. No, sir, I have not.

Mr. Sams:
That is all I have.

Cross Examination.

By Mr. Carey:
Q. The only examination you had of this man, Doctor, was when?
A. Was October 21, 1953.
Q. How long did you examine him, sir?
A. About an hour, a little more.
Q. You based your diagnosis on the history that he himself gave you?
A. I based my diagnosis on the history, my medical examination and, I believe, I secured Dr. Keedy's, the neuro-surgeon's, notes.
Q. Those showed that his neurological examinations were negative, did they not?
A. I just forgot what the notes said, but I believe the diagnosis made by Dr. Keedy was cerebral concussion.
Q. Sir, will you refer to your notes on that—

Mr. Sams:
Wait a minute. I object to Mr. Carey arguing with the witness about Dr. Keedy.

The Court:
Sustain the objection.

Mr. Carey:
I ask that that portion be stricken from the answer, if the Court please.

The Court:

No. I will admit it.

Please refer to your notes and see if that is what Dr. Keedy reported.

The Witness:

I notice here that the notes I made were that Dr. Keedy saw Dr. Stokes January 13, 1953.

Mr. Carey:

Just a moment, please. If the Court please, I move to strike any portion of this doctor's opinion which is based upon something that another doctor stated, who is available in this city and can testify if he were here, it being hearsay. This doctor examined the patient and should come up with his own conclusion with respect to his own examination.

Mr. Sams:

I will stipulate that is all right. I objected to that before.

The Court:

All right. All testimony about what Dr. Keedy stated will be stricken, and the jury will disregard it.

Q. Your contact with this man, Doctor, was confined to about a one-hour examination?

A. About that.

Q. And the history which you got from him was to the effect that he had had a concussion?

Mr. Sams:

I object to that, if Your Honor please.

Mr. Carey:
I will withdraw the question.

Q. You had not ever known him personally or known personally about his background before seeing him on that date, did you, Doctor?
A. No, sir.
Q. You have not known him personally or seen him or had occasion to observe him since that one-hour examination on that day in 1953, have you, Doctor?
A. No, sir.

Mr. Carey:
I believe that is all, sir.

Mr. Sams:
No further questions.

The Court:
You may come down.

A Juror:
Could I ask Dr. LeDrew a question?

The Court:
No, you better not. You may request the Court in the absence of the witness.

Mr. Sams:
That is all, Doctor.

Mr. Carey:
Just one more question.

Mr. Sams:
I object to any further examination, if the Court please.

The Court:
If he has one question, let him ask it.

(By Mr. Carey Continued):
Q. Do you feel that you needed a complete social history in order to complete your diagnosis on this case, Doctor?
A. Yes, sir. My diagnosis, of course, during the first examination is tentative, and study and information and examination could change the tentative diagnosis to what we call a final diagnosis.
Q. Your diagnosis, then, I take it, was not a final diagnosis?
A. No, sir.

Mr. Carey:
That is all.

The Court:
That is all.

Mr. Sams:
Just a minute, Doctor.

The Court:
Wait a minute. I am sorry.

Mr. Sams:
I have just a few questions.

Re-Direct Examination.

By Mr. Sams:

Q. Did you not submit any report to me on this, did you, sir? That was the report you submitted to the insurance company?

A. I submitted my—

Mr. Carey:

I object to that being immaterial.

The Court:

Sustain the objection.

Q. Did the insurance company ever make any effort to get Dr. Stokes back for any further examination?

Mr. Carey:

I object to that.

Mr. Sams:

I will withdraw the question.

The Court:

I think so.

You may come down.

(Whereupon, the witness was excused.)

Mr. Sams:

As the next witness, we will call Dr. Stokes, the plaintiff.

The Court:

I want to explain to the members of the jury that questions are not permitted by jurors for the reason that they

might ask a question that would not be proper in law. It might be a very proper question and probably would be in order, but it might be embarrassing to counsel and they would not object to it or make any effort to stop the answer. Do you understand? This is a business in which you have to proceed according to the fixed rules. Otherwise, all sorts of things might happen.

Thereupon: EDGAR W. STOKES was called as a witness in his own behalf and, after been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Sams:

Q. Will you state your name, please, sir.

A. Edgar W. Stokes.

Q. Dr. Stokes, you have been sitting here and realize the difficulty in hearing in this Courtroom. I am going to ask you to speak as loudly as you can, because these jurors want to hear what you have to say.

What is your address?

A. 1300 Southeast First Street, Fort Lauderdale.

Q. How long have you resided there?

A. Well, since 1945 that has been my home. But I have lived in the north until I came down in 1952 or 1951.

Q. What has been your business or occupation throughout your lifetime?

A. I was the medical director of a private psychiatric hospital.

Q. Where were you born, Dr. Stokes?

A. Louisville, Kentucky.

Q. What year?

A. '98.

Q. Where did you go to school?

A. I went to Vanderbilt, the University of Louisville, and the University of Tennessee.

Q. When did you graduate from medical school?

A. In 1924.

Q. Then what did you do?

A. I took over the operation of my father's sanatorium, because he died. He was a physician and a psychiatrist.

Q. Where was that?

A. In Louisville, Kentucky.

Q. What was the name of that sanatorium?

A. Stokes.

Q. Stokes' Sanatorium?

A. Stokes' Sanatorium.

Q. How long did you operate that sanatorium?

A. I operated it for approximately twenty-seven years.

Q. What was the general nature of the medical treatment given at that sanatorium?

A. I treated alcoholics, drug addicts, nervous patients, mental patients and senile cases.

Q. Doctor, when you came to Florida, what year was that?

A. Well, I came down to Florida in 1951, after I sold my hospital. I don't remember exactly when that was at this time. But I came down at that time to establish my residence here.

Q. What was the purpose? What was the reason for your selling your sanatorium and, first, when did you sell your sanatorium?

A. I sold my sanatorium in the fall of 1950 to the Eastern Star, which is a Masonic order, and they gave me whatever time I wanted to wind up my business, and I was able to do that, I think, April of 1951.

Q. What was the reason for your selling your sanatorium, Dr. Stokes?

A. I had had this coronary condition in 1946. I didn't want to make it generally known because I knew it would affect my business. So I cut down on certain types of patients that were a great strain on me.

Another reason I was selling it is that since 1933 I had had essential hematuria, and whenever I got under a strain with a bad patient or had a patient in a critical condition, where I had to be up with them night and day for a period of time, I would have a return of this bleeding from my kidneys, which was diagnosed by Dr. Hugh Young at Johns Hopkins University, and also by local doctors there in Louisville. My records—I have none, because they were turned over to the Continental Assurance Company at that time.

Q. Doctor, I just asked you why you sold your sanatorium.

Now, when you came to Florida, what was the purpose of your coming to Florida?

A. Well, about 1950, I had talked to Commissioner Gallion in Fort Lauderdale, and he told me he thought by 1952 there would be a position available in mental hygiene.

Mr. Carey:

I object to that.

The Court:

Yes. Do not state what somebody else told you. You came here for what purpose?

The Witness:

For the purpose of engaging in mental hygiene.

Q. Is that a field of the practice of medicine?

A. That is a field of the practice of medicine in which a person qualified as a psychiatrist could enter.

Q. Had you had some offer of a position in that field here in Broward County?

A. Yes, I had.

Q. Did you go into the field of mental hygiene?

A. No, I didn't, because of the fact that I wanted to determine exactly when the position would be available and take some post-graduate work. I came down here in 1952 to see about that, and that's when I had my accident.

Q. Describe to us, Doctor, as best you can what happened in this accident.

A. Well, the accident occurred about six-thirty in the evening, in which I ran into one of those flash storms. I mean, the rain was so heavy that I had to put up all my windows, and I had to slow down in my speed. It was very cold at that time, and I was approaching a bridge that had about a right-hand angle turn and, as I approached that bridge, I saw my light out in the field where I had been traveling for a long time on a straight road. I thought I was going to run into a canal. As I came around the turn, another car was coming toward me, and the lights kind of blinded me, and I got panicky and put on my brakes, and when I put on my brakes, I skidded off the road. It was a new macadam road that was covered with crushed rock and tar, and I went about one hundred fifty feet or two hundred feet, I don't remember exactly, and I looked up in front of me and saw a post, and somebody said to me if you hit that post, it will kill you, and I put on my brakes.

Mr. Carey:

If the Court please, I object to this portion of the answer.

The Court:

Yes. Everybody is interested in knowing the reactions. Be a little more concise about what happened.

Q. Try to restrict your answers just to the facts.

A. I put on my brakes, and I remember turning over three times, and when I came to, I was laying in a canal full of water, and I thought I was still in the bottom of the car. I thought that my time was up, and much to my surprise, I rose up and was only in about four feet of water, and I walked to the bank.

You don't want any details about what happened after that?

Q. Just this much, Doctor: Were you taken from there to a hospital?

A. The police car took me to an inn, the Clewiston Inn.

Q. Clewiston Inn?

A. That's right.

Q. What was done for you there?

A. There was nothing done for me except that they gave me a room.

Q. What was your condition at that time, Doctor?

A. Well, when I got in my room, I don't remember exactly what time it was, eleven or twelve o'clock. I was so stimulated I couldn't sleep. I guess I slept about a half hour or an hour altogether that night, and I had in my grip some penicillin, and I didn't know how badly I was hurt, but I was thinking if I took penicillin, it would sterilize my blood and keep me from having a blood clot.

I started at twelve o'clock that night taking penicillin about every six hours.

Q. For how long did you administer this treatment to yourself?

A. Well, I administered it to myself until I went into the hospital.

Q. When was that?

A. I don't remember exactly.

Q. Do you remember the date of your accident?

A. I do now, because for a long time I lost a week there. When I filled out my insurance reports, I filled them out a week later.

Q. Do you recall now when the accident was?

A. Well, I recall from hearing it here, February 26.

Q. How long after the accident, Doctor, was it before you went in the hospital? Do you remember that?

The Court:

I think the record shows that.

A. It was several days. I don't remember exactly myself whether it was two or three days. I don't remember.

Q. Where was it you went in the hospital?

A. Well, there is one thing I have missed. You asked me if I had a doctor in Clewiston. Well, there is one thing I have always done as a physician. I have—

Mr. Carey:

If the Court please, I move that the witness be confined to answering questions.

The Court:

Just answer the questions, Doctor. Then we can move along a little faster.

The Witness:

I saw a physician in Clewiston.

Q. Did you have a doctor before you got to the hospital?

A. Yes.

Q. Who was that?

A. Well, the next morning I asked at the inn where there was a doctor available, and they said there was one just across the street from the inn. I went over there, and I got over there before he was in, and his nurse told me he had gone to the hospital for an operation, and she voluntarily took me in her car over to the hospital.

Q. Who was that doctor?

A. I don't remember his name.

Q. Did he examine you?

A. He examined me, and I had a hematoma on my abdomen, and he withdrew the blood out of it. That was where the wheel had whipped me and caused like a little cyst to form, and he said if he didn't draw the blood something serious might have happened to me.

I went back to the hotel and arranged to come to Fort Lauderdale, because I felt like something serious might happen to me, and I wanted to get down where there were more doctors.

Q. Do you recall how long after the accident it was before you went into the hospital?

A. No, I don't exactly.

Q. Can you approximate it?

A. Two or three days.

Q. Who took care of you in the hospital? Who was the first doctor?

A. Well, I called up the hospital. I woke up at night with a severe pain in my left leg, and I thought I had a hematoma, and I was scared to death. I called up the hospital and asked them if they would admit me, that I was a physician. They said they would admit me if I called a doctor. I didn't want to bother any doctor that night. They said they couldn't admit me without an accident, but there was an accident case in the hospital, and

there was an intern there, and if he will say that you are sick enough to be admitted, he said they would admit me at that time. They only had one bed in the hospital, but they admitted me.

Q. Did the intern examine you at that time?

A. I forgot.

Q. Did you ultimately call a doctor?

A. No. I had nothing to do with it.

Q. Did a doctor ultimately see you?

A. In the morning.

Q. Who was the doctor?

A. Dr. Patterson.

Q. Do you know his full name?

A. No, I don't.

Q. Did he examine you?

A. I guess he did. I don't remember.

Q. Did they give you treatment at the hospital?

A. Yes.

Q. Of what did that treatment consist?

A. The treatment consisted mostly, the time I was in the hospital—he wanted to give me large shots of penicillin, and I wouldn't take them, and I had this penicillin with me, and I asked if it was all right for me to continue the penicillin that I had. He said it was.

Q. Why did you not want him to give you large shots of penicillin?

A. Because I have known of patients that have become allergic, that had serious skin diseases for a long time following such shots.

Mr. Carey:

We move all this be stricken. It has no bearing on the issue.

The Court:
I will deny the motion. It is immaterial.

Mr. Sams:
It is. There is no question about it.

The Court:
I will deny the motion.

Q. Doctor, how long did you remain in the hospital?
A. Five or six days.
Q. What hospital was that again?
A. Broward General.
Q. What doctor saw you while you were there?
A. Well, Dr. Patterson and Dr. Taylor.
Q. Were those the only two doctors who saw you there?
A. That's all I remember.
Q. What were your symptoms at that time? What were you suffering from while you were in the hospital?
A. Well, what I was suffering from most was this intense pain in my left leg.
Q. Were there any other symptoms from which you were suffering?
A. Shock.
Q. Where did you go after you were released from the hospital?
A. I went home.
Q. Back to Kentucky?
A. No, back to where I lived in Fort Lauderdale, because the doctor said I was too serious to make any trips for a while.
Q. What doctor said that?
A. Well, Dr. Patterson and Dr. Taylor.
Q. Were you ambulatory? Were you able to get around?

A. Yes. After five or six days the pain disappeared in my leg, and I was able to get around. I had this big bruise where the wheel hit my head on my forehead, which I used sterile vaseline on, which I carried in my suitcase, and that prevented me from having a scar there.

Q. Dr. Stokes, what were your symptoms after you got home; let us say over the period of the next few months?

A. I had headaches. I was nervous. I was exhausted. I used to sleep sometimes from eight o'clock at night until eleven or twelve o'clock the next day. I had ringing in my ears. When I turned over, I would hear like hitting a hammer or explosions or different noises.

Q. How long did these things last?

A. Everything seemed to get on my nerves. I didn't take any interest in reading. Food didn't taste right to me.

Q. How long did your headaches last, Doctor?

A. Well, they were almost more or less continuous at first.

Q. How long did that persist; over what period of time? We are talking now, let us say, about March of 1952. How long did the headaches persist?

A. Well, I still have the headaches whenever I get under tension or under any mental strain.

Q. What other symptoms do you have now, Doctor, that you had at that time?

A. Well, the symptoms I have now that bother me most are the noises in my ears and the headaches and nervousness, and now I got to the point that whenever I get under a mental strain, I can't sleep at night. But I don't have that high degree of exhaustion where I just used to sleep all the time.

Q. Dr. Stokes, what other doctors have treated you over this period of time?

A. Well, Dr. Taylor was always very nice to me, and because I used to have to go to Hollywood to see Dr. Patterson, he took over, and he tried for a long time—

Q. My question was what other doctors have treated you?

A. Pardon me.

The Court:

You spoke of Dr. Taylor and Dr. Patterson.

Q. And the doctor in Clewiston.

A. And Dr. Keedy in Miami.

Q. How did you come to go to Dr. Keedy?

A. Dr. Taylor was the one that recommended me to Dr. Keedy. In fact, he tried to get me to go to Dr. Keedy right from the beginning, but I didn't do it.

Q. Why not?

A. Well—

Mr. Carey:

I object, if the Court please.

The Court:

Sustained.

Mr. Sams:

He cannot give the reason for not going?

The Court:

No. I do not think it is material unless he was physically incapacitated. Maybe he did not want to go.

Mr. Sams:

Maybe, but I think that would have a bearing on the mental attitude which we are trying to demonstrate.

The Court:

I do not think so. I do not think it would be of enough weight to go into that testimony.

Q. When did you first see Dr. Keedy?

A. I don't remember exactly.

Q. Can you give us any idea approximately?

A. It was probably a year after the accident.

Q. Between the time of the accident and the time you saw Dr. Keedy, had you done any work?

A. No.

Could I have a drink of water? My mouth is dry.

(Short recess taken.)

Q. Had you made any further effort to do anything about the mental hygiene project in Fort Lauderdale?

A. No. I had not made any effort about it because of my condition. I was afraid if I tried to make an effort about it, it might affect me from ever being able to enter it in the future. I wanted to get myself straightened out first.

Q. What other doctors have you seen besides Dr. Keedy?

A. Well, I saw Dr. Strickler, who is a neurosurgeon in Louisville, and I have been to see an insurance doctor, Dr. Acten and Dr. Troutman, who used to do all my heart work at the hospital.

When I was up in Louisville—I forgot when it was—I was attending a psychiatric meeting that was there, which I was not a member, but I thought if I was in Louisville and it was open to all physicians, I would go to it.

I went to it, and after listening to the speaker for about a half hour, I began to develop pains in my chest, in my arms, in my head, and I thought I was having another heart attack. I went over to see Dr. Troutman, but I had to lay there for two or two and a half hours before he could get to me because I didn't have no appointment.

Q. Let us keep our minds on the question. The question, Doctor, was what other doctors have seen you. You have named Dr. Troutman, Dr. Acten, Dr. Strickler, Dr. Keedy. Are there any other doctors?

A. I have seen Dr. LeDrew. Of course, you know that. I have seen Dr. Dornberger.

Q. That would be primarily the doctors you have seen?

A. Well, I have seen Dr. Dornberger for my heart primarily, and Dr. Keedy for my brain injury primarily.

Q. What has Dr. Keedy done for you?

A. Well, he had, I think, an encephalogram made and sent me to a psychiatrist and psychologist. He had me checked up from different angles. I told him I wanted to find out what was wrong with me and find out if it couldn't be corrected.

Q. After this accident, did you make a claim to the Continental Assurance Company?

A. I was a little delayed in making the claim on account of my confused mental condition, and they almost decided they would turn down the claim because I was so late.

Mr. Carey:

I move that be stricken. It is not responsive, and it is self-serving.

The Court:

The objection will be sustained on the grounds it is already admitted there is a filed proof of loss and the action maintained within the time permitted.

Mr. Carey:

Yes, sir. We admit that.

Q. Since your accident, Dr. Stokes, have you been able to do any work of any kind?

A. I used to get out and fool around in the yard, and I had an electric lawnmower. I used to use that. I thought the physical exercise would help my mental condition. But since I had this last heart attack, I have not been able to do anything like that, because everything I do causes me to have heart symptoms.

Q. Dr. Stokes, I am not referring to yard work. By "work," I mean any type of work that is related to your occupation as a doctor

A. No, I can't remember things. I can't even read things and remember them. I am getting to the point where I can remember past events better than I used to a year ago. At that time I couldn't even remember past events. I can go to a picture show now and see it over two or three times because I seem to miss certain things when I see it.

Mr. Carey:

If the Court please, I move to strike the answer. It is not responsive.

The Court:

The motion will be granted. The jury will disregard the part of the answer that was not responsive, namely, going to a picture show and et cetera.

Q. Will you tell the jury, Dr. Stokes, how your symptoms which you have described to us manifest themselves, let us say, today.

Mr. Carey:
That is leading, and I object to the question as leading.

Mr. Sams:
I do not think that is leading, Judge.

The Court:
It is probably leading, but I will let it go. After all, the witness is also a doctor, and we presume that symptoms mean more to him than it would to the lay person.

A. Well, today my symptoms are better than they were yesterday, and I think describing my symptoms yesterday would more clearly bring out certain symptoms that I have.

Q. Describe to us what your symptoms were yesterday.

A. Yesterday I was so confused that after I left here, my wife had to show me the way back. Today, this morning, I was able to find my way over here very clearly.

Q. Your way over where?

A. To Court from where I parked my car over in the garage.

Q. How does the symptoms that you spoke of as loss of memory manifest itself?

A. Well, the thing is I can sit down and read something and not remember a bit of it. I can read an article in the paper, and I couldn't tell you a thing that is in it.

Q. I think I asked you about this, but up to the time you saw Dr. Keedy about a year from the accident, have

you, since that time, made any further effort to do anything about the mental hygiene work?

A. No, because in order to do anything about the mental hygiene work, I would have to go to school first and take a post-graduate course, and the reason I didn't come down here with the idea of taking the state board is because I thought in mental hygiene work I wouldn't be on a competitive medical practice and wouldn't be necessary to take the state board.

Q. Have you made any effort to go back to the practice of medicine either here or any other place?

A. Well, I made no effort, but in Louisville I have an office set up that I can practice in today; in my home here I have an office set up that I could practice in today if I was able to practice.

Q. Have the doctors advised you that you could not practice medicine, or is it your own idea that you cannot?

A. They told me I am totally and permanently disabled.

Mr. Carey:

That is objected to, if the Court please, and I move it be stricken.

The Court:

I am sure counsel agrees It may be stricker

Mr. Sams:

I think so.

The Court:

The jury will disregard what the doctor told him.

Mr. Sams:

I think that is all I have.

The Court:
You may inquire.

Mr. Carey:
I would like this marked Defendant's Exhibit #3 for identification.

The Court:
Mark it.

(The document referred to was marked for identification as Defendant's Exhibit #3.)

Cross Examination.

By Mr. Carey:

Q. Doctor, I would like to show you Defendant's Exhibit #3 for identification and ask you if that is your signature at the foot of the instrument.

A. It says here "Describe fully your various duties."

Q. The question I asked you was is that your signature?

A. Yes, that is my signature.

Q. That is the form which you yourself submitted?

A. I don't remember. I must have sent it. It has my signature on it.

Q. Do you recall the answer to the question "What is your business or occupation? Real estate"?

A. I have always dealt in real estate all my life.

Q. That was your answer at that time when this was submitted?

A. The reason I answered that –

Q. I just asked if that was your answer and that your signature.

A. Yes, sir.

Q. This is marked as having been received by the company on October 20, 1955?

A. What company is that?

Q. Excuse me, 1952.

A. What company?

Q. Continental Casuaity Company.

That was dated on or about the date on which it was received or a few days before?

A. I don't remember.

Q. The date appears to be 6-4-52. Would that be the date when you forwarded it?

A. It would have to be, but I don't remember.

Q. Doctor, you moved to Florida in 1951, did you not?

A. Yes. I moved down here after I sold the hospital.

Q. You sold the hospital in the fall of 1950, did you not?

A. Yes, but I didn't relinquish it until—

Q. I am just asking, sir, if you did not sell the hospital in 1950 as you testified a few minutes ago.

A. Yes. I sold the hospital in 1950, but I didn't get my money for it.

Q. Just answer the question, please.

When you came to Florida you at no time made any application for admittance to the medical practice in the State of Florida, did you, sir?

A. Well, I wasn't able to—

Q. Just answer yes or no, sir.

A. No.

Q. You were able to make application after you got down here in the fall of 1951 prior to the happening of your accident in February of 1952, were you not, sir?

A. Would you like to know the reason for that?

Q. No, sir, I just want to know if you made an application.

A. No.

Q. You also had a real estate association with Collee-Hammock Real Estate Company?

A. That is a banking name. It never operated as a real estate company.

Q. That is the name under which you bank?

A. That's right.

Q. You had a telephone number where you are reached under that name, do you not, sir?

A. In the last year or so I have put that telephone in there because I didn't want people calling me as a physican on account of my condition. I had to have some number where they could call me.

Q. And the Collee-Hammock Real Estate Company, which is yourself, operated a Collee-Hammock subdivision in Fort Lauderdale, did it not?

A. No. We don't operate.

Q. You have one, do you not?

A. No, I don't. I never had one.

Q. Is there a Collee-Hammock subdivision by that name?

A. I think there is a Collee-Hammock Apartment House. Somebody calls me up all the time to rent apartments for Collee-Hammock Apartments.

Q. Your Collee-Hammock Company owns and operates two stores located in Lot 16, Block 14?

A. No, not two stores. There is one building there.

Q. Is that a commercial building?

A. That is leased on a ten-year basis.

Q. Who managed that building?

A. No management to it. The lessor manages it himself.

Q. You take care of what management there is as to the management?

A. No, sir. That was in the lease. They took it over, and they would have sole responsibility for it.

Q. Let us put it this way: You have no one to manage the property for you?

A. No. What property I have, I have in real estate company's hands to handle and sell.

Q. Yes, sir.

When you were at Clewiston, a police officer came along after the accident?

A. No.

Q. And took you to Clewiston?

A. No. You won't let me complete anything,

When I came out of the water, there was a man standing there, and he asked me if he could help me. Another man came up shortly afterwards and took over, took charge of me, and got in touch with the police. He took care of all my luggage and saw that I got to the hotel all right. He looked after me in general, and I tried to get his name, but they wouldn't give me their names. I tried to offer them some reward, and they wouldn't accept any reward. I don't know who they were.

Q. Let me ask you questions, please, and you answer the questions.

Who was it that took you to the Clewiston Inn?

A. They put all my luggage in the police car, and the police took me.

Q. Then it was the police who took you to the Clewiston Inn?

A. Yes, the police did take me.

Q. They did not take you to the Clewiston Hospital, did they?

A. No. I didn't want to go to the hospital.

Q. Did you have a doctor at the Clewiston Inn that night?

A. There wasn't any doctor available. I tried to get a hold of a doctor, but there wasn't any available.

Q. You went over to see a doctor, then, the next morning, did you?

A. Yes.

Q. And the nurse took you out to the hospital?

A. Yes.

Q. They did not take you into the hospital at Clewiston as a patient, did they?

A. Well, I went in for an examination, to see what my condition was. But he said I did not have to stay at the hospital.

Q. You were not even admitted at the hospital, were you?

A. No, I was not even admitted.

Q. There is not even a hospital record at Clewiston?

A. No. I forgot the doctor's name. I don't know whether he made a record of my visit or not.

Q. You have a record of the doctor who saw you out there, sir, do you not?

A. Not that I know of.

Q. He did not hospitalize you after examining you?

A. I tried to find out who the doctor was, and he moved away from there.

Q. That was February 26, 1952, was it not, when you went to the hospital in Fort Lauderdale? Rather, that was three days later on February 29, 1952?

The Witness:

Judge, I think you are going to have to excuse me. May I be excused for a few minutes?

The Court:

We will take a five minute recess.

(Short recess taken.)

The Court:

Do you each waive the polling of the jury and consent they are present?

Mr. Sams:
Yes, sir.

Mr. Carey:
Yes, sir.

The Court:
You may proceed.

Mr. Carey:
May I have the question read.

(The question referred to was read by the reporter.)

Q. Doctor, you stated you had a telephone under the Collee-Hammock Real Estate Company's name so that you would not get calls as a doctor?

A. That's right. My wife has quite a few friends, and they could contact her, you see.

Q. Could you not have accomplished that by having an unlisted number?

A. I had an unlisted number for a while, for a long time, but it didn't accomplish any results. I mean, you can check that with the telephone company.

Q. Did you engage in business as the Collee-Hammock Real Estate Company?

A. No, I don't engage in any buisness.

Q. Do you have an income from the Collee-Hammock Real Estate Company or from its properties?

A. No, never have had an income from it.

Q. Was Dr. Patterson your attending physician at Fort Lauderdale?

A. No. He is in Hollywood.

Q. I beg your pardon?

A. Dr. Patterson lives in Hollywood.

Q. Yes, but was he your attending physician while you were at the Broward Hospital?

A. Yes.

Q. Is it true, Doctor, that you have been going through the period known as the climacteric?

A. Yes. I have been going through that since about 1947 or '48; I don't remember exactly.

Q. The symptoms which come along in that period are practically the same symptoms that you have been complaining of, are they not?

A. No, I don't think so.

Q. There are symptoms of nervousness, tension?

A. Symptoms of nervousness, yes.

Q. Tension?

A. Tension.

Q. Emotion?

A. Emotion. But it seems like that was aggravated by my accident.

Q. At what time did you say that began? You feel you have been going through that period for how long?

A. I just can't remember exactly.

Q. Approximately.

A. About '47 or '48, I think.

Q. You feel that you have about finished with that period now in your life?

A. Well, I had finished with that about the time of the accident.

Q. You had been having some difficulty with that so that it was noticeable to you?

A. I was having difficulty with my wife

Q. I beg your pardon?

A. I was having difficulty with my wife. I was suspicious of her.

Q. You have had nervous difficulty and an upset condition for some time prior to this accident, had you not?

A. Well, I didn't have them to the extent I couldn't practice. But I had them to the extent that I had to limit my practice.

Q. You had marital difficulties some time prior, had you not? Did they not culminate in a divorce suit in Louisville?

A. That was in 1952 that all happened.

Q. Yes, sir. That divorce action was begun about when, sir?

A. Well, that was—I forget exactly. It was some time in 1952. That's all I can remember.

Q. That, of course, was a very upsetting influence in your life, was it not?

A. Well, I didn't think it was upsetting.

Q. It is not the kind of thing that calms one, is it, in his daily life?

A. Well—

Q. Do you not feel that marital difficulties are just about one of the worst and most upsetting things in a person's life?

A. One of the reasons I had this accident was due to the fact that I was trying to slip in here and surprise my wife. I didn't think she would even be angry at me that night, and if I had not tried to slip in that night at dark when it was raining, I probably wouldn't have had the accident.

Q. The suit for divorce was filed in Louisville, was it not?

A. Yes.

Q. Was that not filed before you came to Florida?

A. I can't remember when it was filed. There is a record in Louisville. You can check on it.

Q. Do you remember when it was?

A. No. It was never filed. No, it was never filed.

Q. It was never filed, Doctor?

A. No, it was never filed. It was to be filed, but it was never filed, it seems like to me now. If it was, I don't remember.

Q. At any rate, you and your wife had gone through a period which developed the time when you were more recently in Louisville, as well as the time when you were down here in Florida. Is that not true?

A. I think the period that I went through that aggravated—The period I went through aggravated my emotional instability, and that was due to the fact of selling the hospital and going through all the strain that I had to go through at that time in closing up the hospital and revamping my whole life.

Q. Your outlook has been improving now for some time, as a matter of fact, since your reconciliation with your wife in around 1952, has it not, Doctor?

A. My outlook has improved, but I am still so nervous that I get under her skin a lot and worry her a lot, which I should not do.

Q. Doctor, you have talked about a proposed hygienic job or a job doing that type of work?

A. In mental hygiene.

Q. That was merely some political connection you thought you might develop, was it not?

A. No. I had definite arrangements with that. I have a letter in my pocket here that proves it.

Q. You were hoping to get an appointment, were you not, on some state board?

A. No. That was to do mental hygiene work. At that time they didn't have any physician in Fort Lauderdale that did mental hygiene work.

Q. Tell me, Doctor, why did you show on this report, this claim report of June 4, 1952, that your occupation was that of the real estate business?

A. Well, the reason I showed that is because I have been in the real estate business, that is, owning and selling a piece of property of my own, but I have never engaged in the purchase of it. I always pay an agent a commission to sell it or buy it. I thought when you said I wasn't a physician any more that I had to put down something there, so I put down real estate.

Q. Your words on this form as to what your business or occupation was then describes your various duties as management-selling and buying before March 4, 1952. What did you mean by that, sir?

A. Well, what I meant by that was after I sold the hospital I had been so busy engaged in the practice of medicine for ten years, that I had some real estate in Louisville that I couldn't repair, and I had never managed it because I always paid another man a commission to manage it and handle it for me. In fact, I didn't even have to do the repairing if I didn't want to.

Q. Doctor, when you went to Clewiston and was examined by a doctor, he did not treat you at all, did he?

A. The only thing he treated me for was to withdraw this blood from the hematoma on my abdomen. He told me to go back to the hotel and go to bed and stay in bed for a while.

Q. It was not serious enough for him to tell you to come into the hospital and stay right then?

A. They were filled up. They didn't have room for a patient like me.

Q. He did not recommend that you go to a hospital, did he? He recommended you go back to the hotel. Is that right?

A. He told me to go back to the hotel and stay in bed until I could go to Fort Lauderdale, and he would see me later. I didn't want to do that, so I came on to Fort Lauderdale.

Q. You did not go to the hospital then until three days later when you went to the hospital in Fort Lauderdale, did you?

A. That's right. I didn't want to go there, and I wouldn't have gone there if I didn't have the severe pain in my leg.

Q. But you did not go until then, did you, sir?

A. No, sir.

Mr. Carey:

I believe that is all, sir.

Mr. Sams:

That is all I have, Judge.

The Court:

You may come down, Doctor.

(Whereupon, the witness was excused.)

The Court:

We will adjourn until nine-thirty tomorrow morning.

(Whereupon, at 5:00 p.m., the hearing adjourned until 9:30 a.m., January 25, 1956.)

In the District Court of the United States for the Southern District of Florida, Miami Division.

Edgar W. Stokes, Plaintiff,
vs. No. 5607-M-Civil.
Continental Assurance Company, an Illinois Corporation, Defendant.

Miami, Florida.
January 25, 1956.

Thereupon: MRS. MITTIE STOKES, was called as a witness on behalf of the Plaintiff, and having first been duly sworn, was examined, and testified as follows:

Direct Examination.

(By Mr. Sams):
Q. What is your name?
A. Mrs. Mittie Stokes.
Q. Mrs. Stokes, what is your address?
A. 1300 South East 1st. Street, Fort Lauderdale.

The Court:
You are the wife of the Plaintiff in this case?

The Witness:
Yes.

The Court:
You reside with him?

The Witness:
Yes.

(By Mr. Sams):

Q. When were you and Dr. Stokes married?

A. In 1924.

Q. Mrs. Stokes, I am not going to go over all the things that were gone over with the other witnesses, and the jury have already heard most of the facts; but I will ask you some questions. First of all, how long did Dr. Stokes operate his sanatarium?

A. Well, he took it over in 1924 when his father passed away.

Q. That was the same year you were married?

A. We were married in 1923. I am sorry; then his father passed away in January, and he took over the Hospital in June.

Q. Did he operate that continuously?

A. Yes, he did.

Q. Until when?

A. Well, until he sold it in 1950.

Q. Did you and Dr. Stokes have some marital difficulties?

A. Yes, we did.

Q. When did that begin?

A. Well, about two years before he sold the Hospital he became very nervous and upset, and he couldn't get along with anyone, and everything that was wrong, he blamed me for it; and he got to the point his business was going down; and I got to begging him to sell it, so he blames me now for selling it.

Q. When did he sell the sanitarium?

A. Well, I think he gave you that record yesterday. It was in 1950, I believe.

Q. Prior to that time did you leave him?

A. No. I left him after he sold the hospital. It was impossible to live with him. He was just so nervous, and he blamed me for everything, and I didn't get any

rest at all. He walked the floor practically all night every night, and he was so jealous of me. We would go to church, and an elderly couple came up and talked to me; and while he was holding my hand and talking to me, and telling me about a trip he was making to Florida,—when he got home he treated me terribly about it, and said I had gotten familiar with the man.

Mr. Carey:

If the Court please, I object to this line of testimony as being immaterial to the issues here.

The Witness:

If you will bear with me, I think I can tell you. It all led up to a terrible state.

Mr. Sams:

I think this goes to show the condition—

The Court:

Let's don't go into details. The witness is very nervous. It was difficult to live with him.

Mr. Sams:

I think some of the details are going to be inportant to describe the man's condition.

(By Mr. Sams):

Q. Prior to this time had Dr. Stokes been in the condition you are describing now?

A. No, he had not. He was a very successful business man as well as a doctor. He really got his patients well and he had treatments that he worked out himself that helped these people.

Q. When did Dr. Stokes come to Florida?

A. Well, we had been back and forth to Florida for many years because my husband had an asthmatic son, and he came to Florida. He was on his way down at the time he had this accident.

Q. Were you at that time living with Dr. Stokes?

A. No, I was not. My lawyer had—

Q. Don't go into details. You were not living with him at that time?

A. No.

Q. I wasn't your lawyer, or Dr. Stokes' lawyer at that time?

A. No. A lawyer in Louisville.

Q. When did you and Dr. Stokes go back home; when did you start living with him again?

A. I cannot give you the exact date.

Q. Approximately.

A. It was about a year and a half after he had this accident.

Q. Can you describe to us what Dr. Stokes' condition has been since you have been living with him since this accident, or gone back with him after this accident?

A. Well, it has been a terrible thing to put up with.

Q. Tell us about it.

A. When a person is unbalanced, he, of course, feels like everyone is following him. When we get out to go any place in the car, or walking—we live on a corner, and when cars pass they naturally throw the lights on our house, and he thinks they are doing it just to aggravate him. We sit at the table to eat, and he has to get up to see the cars when they pass. Naturally a lot of them blow their horns on account of the corner, and he thinks they are blowing their horns just to aggravate him. At night, if we go anv place to eat, he looks in the closets and under th eds, and everywhere. In the middle of the night many times he comes in and puts

on my light and says, "Who were you talking to?" when I was sound asleep.

Mr. Carey:

If the Court please, I wish to move to strike this testimony. The Complaint is this man was disabled from the accident on February 29, 1952, and that subsequently, while disabled, he had a heart attack, by the amendment to the Complaint; and this testimony shows prior to the accident they were separated and not living together, and had marital difficulties; and I don't think it is a proper line of testimony, and I object to it, and ask that it be stricken.

(Argument off the record.)

The Court:

I will let it go in, and you will have to amend your pleadings.

Mr. Sams:

If our pleadings do not conform to it, we will.

The Court:

We will go ahead, and you may move to strike it, Mr. Carey.

(By Mr. Sams):

Q. Mrs. Stokes, has Dr. Stokes engaged in any business activities since the two of you have been back together?

A. He couldn't. No, he has not.

Q. Did you do anything about his business at all?

A. That's another thing. He used to discuss his business with me, and since the accident, being as bad as he was, he wouldn't discuss anything with me. He won't tell me anything about his business.

Q. Does he carry on correspondence with people?

A. Some. He simply lets his mail pile up until his desk at home is way high with everything. Months and months later maybe he would look at the mail that should have been attended to earlier. He has that chair and his desk piled with mail and things that should be attended to, and he takes my dining table and puts everything on that, and I am not allowed to touch it. In his bedroom I can only go in to make his bed and fix his floor, his chest and dresser, and everything is piled over everything in there.

Q. What does he do during the day?

A. Well, for a while he could not read. Now he sits and reads a little, and he walks and paces the floor most of the time. He will sit down and listen to some programs on the radio, but he doesn't do really anything.

Mr. Sams:

I think that's all

Cross Examination.

(By Mr. Carey):

Q. Mrs. Stokes, did I understand you to say that you had separated from your husband because of these difficulties before this accident on February 2, 1952. Is that correct, ma'am?

A. That's correct.

Q. When your husband moved down here did he not come down here to retire from his practice?

A. Well, he had an office, and he kept up all of his medical connections.

Q. He had no intention of applying for a license to practice medicine in Florida, did he?

A. Yes. He had talked to this man before.

Q. That was a political appointment, was it not; he hoped to get appointed to the Political Board?

A. I don't know what kind of an appointment you would call it, but he was going into medical work, consultation work.

Q. The question is, he never applied to the Medical Board or made any application to practice as a Doctor down here, did he?

A. He had the accident on the way down and from there on he wouldn't be able to do anything about it.

Q. He had been down in Fort Lauderdale prior to February 26, 1952?

A. We were down here part of the years several years before.

Q. You had your home in Fort Lauderdale a number of years prior to that, hadn't you?

A. That's right, because I kept my son down here. He had asthma.

Q. And he had retired from his practice when he sold his sanitarium and came down here in retirement from his practice, had he not?

A. He didn't say he was retiring.

Q. You understood it to be that, didn't you?

A. He was getting rid of his hospital because he wasn't able to carry on there. I don't know that the word "retire" entered into his conversation with me. I never heard it.

Q. When was the time that he started to use the Collee-Hammock Real Estate Company name?

A. I think he told you yesterday. He has bought property himself and sold it for a long time. Prior to this he had bought some property, and of course he wanted some connection with the public; and he said he would take that name, and if he had someone who wanted a property, he would always refer them to an agent.

Q. When did he start to operate as the Collee-Hammock Realty Company; when did he start using that name?

A. He opened that as a bank account. I couldn't tell you the date, but somewhere near the time when we came down here.

Q. That would be when, 1949?

A. As I told you, I don't know. He stopped taking me into his confidence and telling me those things, and I don't know when he opened that.

Q. When to the best of your recollection did you folks move down here to Fort Lauderdale? Was that in 1949?

A. We hadn't completely moved down here. We were living in Louisville in our apartment. We came down here in 1950.

Q. When did you buy the home in Fort Lauderdale?

A. We bought the home in 1938, not the home we live in now, but it was three blocks from where we live now.

Q. I understand you to say that he started to use the Collee-Hammock Realty name at about the time when you came down here. What did you mean by that?

A. As I say, I do not know when he opened that up, but it was around the time when we came down here to live.

Q. When was that about?

A. Well, he was on his way down here when he had the accident. That was in 1951 or 1952, whatever it was.

Q. When did you separate from him?

A. You have the record there. Around the first of February I think it was.

Q. In what year?

A. The same year he came down.

Q. That was after the accident happened?

A. That's right.

Q. He has been a nervous type of person for many, many years, hasn't he?

A. Yes. For two years, as I told you, before he sold the hospital he was very nervous, and he just couldn't converse with people. If they didn't believe or think like he did, he got mad about it.

Q. He was a nervous, neurotic type of person most of the time you have known him. Isn't that so?

A. No. He was a wonderful husband, and a wonderful man.

Q. Now, Mrs. Stokes, does your husband drive a car?

A. Sometimes he drives it for a short period now.

Q. Did he drive down here?

A. No. I drove down here. There is too much traffic, and he gets nervous.

Q. I understood him yesterday to say that he parked the car; did he park the car?

A. No, he did not. We parked the car over at—I don't know what the building is.

Q. Has he driven down here from Fort Lauderdale recently?

A. Well, part of the way. I couldn't tell you just when that was, but when he gets into traffic and all, I have to take over because he gets nervous, or gets to day-dreaming. He will look far ahead and doesn't seem to realize what is going on around him.

Q. Just to clear up one or two things. He had this sanitarium which he inherited from his father, and he started to operate it about 1923. Is that correct?

A. No. He started operating it in 1942. We were married in 1923, and he had that year in school, and then his father passed away in January of 1924, and he graduated in June, and he took over the hospital at that time. Of course, he had an assistant doctor with him.

Q. Has he tried to do any other work, such as working in the real estate business and that sort of thing in the last years?

A. No, he hasn't.

Q. He hasn't tried to do any work of any knid since he left Louisville and he sold the sanitarium. Is that correct?

A. No, he has not.

Q. That's true all before the accident ever happened; in other words, he hasn't tried to do any work since he left Louisville and sold the sanitarium. Is that correct?

A. None whatsoever.

Mr. Carey:

I believe that's all. Thank you very much.

Mr. Sams:

That's all.

Thereupon: CHRISTIAN KEEDY was called as a witness on behalf of the Plaintiff, and having first been duly sworn, was examined, and testified as follows:

Direct Examination.

(By Mr. Sams):

Q. Will you state your name?

A. Christian Keedy.

Q. Are you engaged in the practice of medicine in Dade County, Florida?

A. I am.

Q. Where is that, Doctor?

A. My office is in the DuPont Building.

Q. And are you engaged in any specialized field in the practice of medicine?

A. Yes, I specialize in neurology and neurosurgery.

ogy and neurosurgery is?

A. We are primarily interested in those disease and injuries of the brain, the spinal cord and the parietal nerves, the nerves that extend out from the brain and the spinal cord into the extremities of the trunk.

Q. Does neurosurgery mean surgery for the brain?

A. Yes. If any of these iilnesses or diseases can be helped by surgery, we actually perform the surgery on the brain and spinal cord.

Q. Doctor, would you state for this jury what your educational qualifications have been to qualify you for your specialty in neurology and neurosurgery?

A. I was graduated from Amherst College in 1937, and Cornell University Medical College in 1941. I then had an internship in general surgery at Bellevue Hospital, New York City, and then a residency in neurosurgery at Bellevue Hospital. I then had a residency in general surgery at—that included neurosurgery, at the Memorial Hospital in Worcester, Mass. I was then in the Armed Services for thirty-one months, and I was first sent to the Army neurosurgical school which was at Columbia University. I was then assigned to the neurosurgical section in Texas, where I stayed for about a year, and was then sent overseas to the neurosurgical Evacuation Hospital which operated in the European theatre. After be-

ing overseas for eighteen months, I was returned to this country, and discharged from the Army, and took a residency in neurosurgery at Albany Hospital in Albany, New York. I was then attached to the brain tumor registry at Yale University in Connecticut. Since 1948 I have practiced neurosurgery here in the Miami area, and have been associated with Dr. Tracy Haverfield.

Q. Dr. Keedy, are you a member of any Societies within your specialty of neurosurgery, or within the medical field generally, and if so, would you state to the jury what they are?

A. I am a member of the Harvey Cushman Society, the Neurosurgical Society of America, the Southern Neurosurgical Society, and the Congress of Neurological Surgeons; I am also a diplomate of the American Board of Neurological Surgeons.

Q. Doctor, is the membership in the American Board of Neurological Surgery, is that one that is honorary, or is there an examination?

A. No. In order to become a member or become a diplomate, as it is called, in the American Board of Neurological Surgeons, first you must have a number of years of special training in neurosurgery; and you must have practiced for two years, and then you must have passed an examination which is given by the Board.

Q. Doctor, are you on the staffs of any local hospital, and if so, will you tell us which ones they are?

A. I am on the staff of St. Francis Hospital, Mercy Hospital. Director of the Neurological Surgery Department of the Dade County Hospital in Kendall. Director of the Neurological Section at Jacksonville. I am on the staff of the Variety Children's Hospital, and I am attending at the Veterans Administration Hospital, and I am neurological surgeon consultant for the Veterans Administration Regional Office.

Q. Dr. Keedy, have you had an opportunity in your specialty to examine and to treat Dr. Edgar W. Stokes, who is the Plaintiff in this case?

A. I have.

Q. Before you go into your examination and treatment, and so forth, approximately how many times have you seen Dr. Stokes?

A. I can just estimate it. I haven't counted up, actually, and I don't have my card with me; but I have seen him over a period of three years. I averaged about every six weeks,—six to eight weeks.

Q. During the course of your examination how long would he be in your office?

A. Anywhere from an hour to a hour and a half on each occasion.

Q. When did you first see Dr. Stokes?

A. On the 30th of January 1953.

Q. And you are still seeing him at the present time?

A. Yes. I saw him in December of last year.

Q. Do you know how Dr. Stokes came to your office?

A. He was self-referred to my office on his own volition. I don't know how he happened to know about me.

Q. Can you tell us, please, sir, what your initial examination consisted of, and what history you received from Dr. Stokes, and what your opinion or conclusion was at that time?

A. I first saw him on the 30th January, 1953, and at that time he came to me because of continued headaches and dizziness, nervousness and inability to make decisions, and he gave me the history that on the 26th of February, 1952, approximately a year before I saw him, that he had been in an automobile accident; that he was driving in the vicinity of Clewiston, and the roads were slippery, and that he skidded, and that car went out of control into the canal. There is an area there where he is not

sure what happened. He said he was rendered unconscious and became aware of his surroundings when he was in the water floundering around, and he stated that he was helped out of the water by someone who was passing by. He complained of some pain at that time, and bruises on his leg and bruises on his head. He stayed that night in Clewiston, and the next day was taken over to Fort Lauderdale and there went under the care of a Dr. Taylor, because of pain in his leg and because of bruising on the left side of his forehead; and he stated that he was kept in the Broward General Hospital for four or five days. The specific complaints at the time when I saw him, which was a year approximately after the accident,—he was complaining mostly about difficulty in remembering dates, being unable to concentrate on anyone or anything for any period of time. He stated that he had become excessively nervous, and he feels insecure and does not as competent as he formerly did in taking care of his affairs: and he stated he was afraid to go into any business ventures for fear he would not be able to make the proper decisions. He stated he has trouble spelling certain words which were well known to him, and which he formerly had no trouble with. He states that at times he notices he rambles in his conversation, and cannot remember what he says, and cannot go on and finish his conversation. He contributes this to having a poor memory. , He also states that he has had some dizziness, but this has improved. He states that he frequently mislays things. He states he continues to have mild headaches, and at times feeling heaviness around his heart. He states that whenever he does anything that requires any concentration, it usually produces a headache, and not infrequently, a heaviness around the heart. He complains that he tires easily, and becomes exhausted in attempts to do any type of work. He

complains of constant itching in his ears, and recently he has been to an ear doctor to see about this. He also complains of ringing and hissing sounds in his ears. He stated that he formerly in 1939 had some blood in his urine. At that time he was seen by some doctors at John Hopkins. He also stated he previously had some type of minor heart attack and was taken care of when he was in Louisville. He stated he formerly ran an sanitarium in Louisville, but that he had given this up because it got too much for him, and it was making him too nervous. Now on his general physical examination, all of his examination was essentially negative. He was alert and cooperative and somewhat garrulous anl rambling in his history. He was well oriented; he was able to stand in a normal position without swaying. The skull was externally negative. There is an area somewhat lighter than the rest of his forehead on the left frontal region, where he stated he had this abrasion. The visual fields were full to gross testing. The extra-ocular movements were well done. The fundi appear normal. There was some mild A.V. nicking. That is, looking into the eyes, looking at the vessels, the retina. They show some slight evidence of hardening of the arteries,—those arteries which you can see by looking into the eye. There is no exudate or hemorrhage. Sensation over the face was intact. There is no facial weakness. Hearing is grossly normal. He talks and swallows without difficulty. The tongue protruded in the midline. There was good strength and coordination in all four extremities. Finger to nose test and heel to shin test was done satisfactorily bilaterally. Sensation to pin prick, touch, vibration, and position sense is intact throughout. The tendon reflexes are active and equal in both the upper and lower extremities. Plantar reflexes are flexor in response. The blood pressure is 120/80, which is perfectly normal blood

pressure. The heart sounds are regular and of good quality.

Now at that time I felt that the patient was suffering from a post concussion syndrome which was manifested by mild headaches, forgetfulness, difficulty in concentrating, and irritability. I didn't feel that he showed a great deal of arteriosclerosis in his parietal vessels. He undoubtedly has some arteriosclerosis. People that have had any degree of arteriosclerosis never stand head trauma as well as other individuals. However, I felt over a period of time that it would gradually improve, and felt that an electroencephalogram ought to be done.

Q. What is a post concussion syndrome; what do you mean by that?

A. We make the diagnosis of a concussion on any person that has had a blow to the head of sufficient degree to render them unconscious or have them a period of disturbed consciousness. That comes from a general shaking up of the brain. After that type of injury, which is concussion, people frequently complain of headaches, dizziness, irritability, nervousness, difficulty in con centrating and memory difficulty, and those are all of the same symptoms that this patient was complaining of. Therefore I felt that he had a post concussion syndrome.

Q. Now, Doctor, over the period of time that you saw him, that would be the past three years, during the intervals that you have seen him, has your opinion or conclusion from your first examination changed at all?

A. It has changed in some respects. As I saw him over a period of time certain things came out. Primarily psychoneurotic tendencies, and some tendencies verging on being truly psychotic.

Q. What do you mean by that?

A. In my first hitsory I didn't elicit from him that he was having a lot of emotional difficulty as far as be-

ing suspicious of people. He told me at various times he thought people were following him and people going by his house and shining lights in the windows, and he would get up at night and run out of the house thinking someone was annoying him,—not really thinking it was harmful, but he just couldn't control these ideas; and when he drove his car, particularly at night with the lights on, he would feel that these lights were following him, and would become extremely nervous and upset over these ideas. He also became suspicious of his wife at times, and would think that certain very casual remarks had special reference to him, and that made me feel that his basic personality structure, even before this accident, was probably one of strongly psychoneurotic trend.

Q. What does psychoneurotic mean; what do you mean by that?

A. When we talk about a psychoneurosis we are talking about someone that is unstable emotionally. All of us vary in different degrees to handle our emotional response to questions. Many of us get very emotionally upset very easily, and those people we say are psychoneurotic,—it is a gradation from your normal response. All of us have an emotional response to things, but those who respond excessively emotionally, or a good bit more than average, then we classify them as being psychoneurotic, but it is an exaggerated normal response. Now when you get into the field of delusional ideas,—people that feel and believe something that isn't true, and has no basis, then they are bordering into the field of being psychotic. In other words, they are out of touch in certain respects with reality with the factual situation. It isn't that they are responding emotionally more in a normal way. It is they are actually having false ideas that have no factual basis. We feel these paranoid ideas about people following him and looking in the window,—they were not based on factual information.

Q. Do you feel, Doctor, from your numerious examinations of Dr. Stokes that he was sincere in his complaints?

A. Yes. I have never felt that he was feigning in his complaints or attempting to exaggerate any of his complaints. He is an extremely unstable, emotional type of individual. One who is extremely concerned over his bodily function. He complained of many, many things. He would send me long letters describing how he felt, and when he went to write a few words, he would get hot, and would perspire, and his toe would get numb, —many traumatic complaints which actually aren't due to any organic disease of the nervous system, any malfunction of it from any actual destruction of the nervous system, but due to an over emotional play that produces those symptoms.

Q. Do you feel that the accident he had in 1952 had any bearing on his present condition?

A. Yes. In discussing it, I would say this, that I think that he first of all was a 55 year old man, who had already had some difficulty in running a sanitarium. He had been running a sanitarium, but things got more than he could stand. He said he couldn't stand it any longer, take care of the patients, and problems and decisions he had to make was more than he felt he could do. And he had given up that, and he started to Florida with the idea, he said, of getting some job down here in mental health, sort of preventive psychiatry; and on the way down here he had this accident, and I think from the history he did sustain a concussion, and the concussion and the psychic trauma, the tremendous emotional reaction that he had to this accident of being thrown in the canal and his brain being shaken around, markedly aggravated all of his pre-existing difficulty, plus giving him the headaches and dizziness, which many times follows a concussion. I think that the accident itself exaggerated

his pre-existing psychoneurotic tendency, and superimposed on that a post concussion syndrome. When you do that, the headaches and dizziness, and so forth, give the patient more concern and causes the psychoneurotic manifestations to be more pronounced.

Q. You mentioned something about an electroencephalogram. What is an electroencephalogram?

A. An electroencephalogram actually is a recording of the electrical activities of the brain. It is very similar to an electrocardiogram. The electrodes are placed on the body, and the impulses from the heart are recorded, so you can deal with the brain by placing small wires on the scalp, and with an amplifying system you can actually record the little electrical impulses that are given off by the brain, and if there is an organic lesion of the brain, that is, if there is a blood clot there, or any destruction of the brain tissue, you can get a disrhythm instead of a normal rhythm. There is an irregular rhythm over that area. We had this done out at the University of Miami, and the record that we obtained was that it was a normal record, indicating that he hadn't sustained any actual tearing of his brain, or any blood clot, or anything of an organic nature.

Q. Did you have any other tests run on him?

A. Yes, we had some psychometric tests run. Those are tests in psychology which tests the intelligence, and it is to determine whether an individual can concentrate over a long period of time, whether his memory is good, whether or not he is able to make decisions in the normal amount of time with the normal speed, and these tests show—

Mr. Carey:

Just a moment, please, Doctor. If the Court please, I object to the relation of any tests taken by somebody else, unless the Doctor took them, himself.

The Court:
Sustained.

(By Mr. Sams):
Q. Did you use these tests in any way in forming any part of your diagnosis or in corroborating your diagnosis?

Mr. Carey:
I object to that. It is immaterial. If he did, that portion of his diagnosis should be stricken.

The Court:
He can recite the patient complained of so and so, and he knew the patient took certain tests.

(By Mr. Sams):
Q. Do you have with you the records of the tests that were made of Dr. Stokes? The psychometric tests?

A. I have the report that was rendered.
Q. Do you have that with you here?

Mr. Carey:
I make the same objection.

The Court:
Sustained. He can state he had reports, and based upon those reports, any findings he made, plus his examination. I don't think it is too material. I think the main thing is what is the condition of this man, and what it has been.

Mr. Carey:
It is a subjective type of examination. We should have the right to examine the one who made the tests.

(By Mr. Sams):

Q. Did the report that you received of this test corroborate your opinion that you have stated?

Mr. Carey:

That is obejected to, if the Court please.

The Court:

Sustained.

(By Mr. Sams):

Q. Does the report show the actual results of the test?

A. Yes.

Q. In detail?

A. I do not have the complete report.

The Court:

The report shows the conclusions of the person who made the test. Is that correct?

The Witness:

Yes. The evaluation of the person who made the test is tabulated on the report. These tests are complicated tests.

The Court:

That's the reason why you should have the tests here, so they could be subjected to examination.

Mr. Sams:

I didn't learn of these tests until this morning.

The Court:

I don't think it is too material anyway.

(By Mr. Sams):

Q. Dr. Keedy, from your examination and the history you have elicited from him, and your observation of him, and your treatment of him over a period of three years, is it your opinion that Dr. Stokes is now suffering from any disability?

A. That is right.

Q. I wonder if you would tell us, Doctor, to what extent you feel Dr. Stokes is disabled at the present time?

A. You are talking about disability,—disibility for what? He isn't showing a physical disability as far as being able to walk around and dress himself, and so forth, but he is showing a marked disability in his mental functioning power, in what we frequently call loss mental efficiency. He just cannot do mentally, and cannot operate mentally in an efficient way; and I don't think he is mentally operating efficiently to do any type of productive work. Certainly, I don't thiink he is able to carry on as a physician. I doubt if he could do any type of work that required him making decisions or planning. Those are the spheres in which he shows a great deal of difficulty mentally, and also his emotional instability with all of his activities, and I think occupationally he is completely disabled.

Q. Dr. Keedy, over what period of time do you feel that he has had this disability, based on your examinations, and your observations of the man?

A. I think he has had this disability ever since I have examined him.

Q. That over the period of the past three years?

A. Yes.

Q. Have you reached any opinion or any conclusion as to whether or not he was disabled before he came to you?

Mr. Carey:
I object to that, if the Court please. It is mere speculation.

The Court:
Yes. You can ask him if he was disabled when he first saw him.

(By Mr. Sams):
Q. Do you fell that at the first time you saw him, in other words, on your first examination, did you feel at that time he was disabled?
A. I did.
Q. Have you arrived at any opinion whether he was disabled for any period before that time?

Mr. Carey:
I object to that. It depends entirely upon the subjective history that this man gave to this doctor.

The Court:
It might not.

Mr. Carey:
The testimony is that all the neurological examinations were negative, if the Court please.

The Court:
You can bring that out on cross examination. Let's put the question this way. Do you think the condition he was in, which you say was disabling, at the time you first saw him, was a condition that had been in existence for some period of time?

The Witness:

Yes. I think it existed certainly from the time of the accident, which was a year previously to my examination of him. I have no information of how disabled he was before that time other than that he had given up his job of running the sanitarium, because he felt that it was too much for him.

Mr. Sams:

I believe that's all I have.

Cross Examination.

(By Mr. Carey):

Q. Doctor, did you come to the conclusion when you first saw him that he was disabled at that time?

A. I felt that he was having a lot of trouble at that time. He was having headaches. I didn't evaluate him as to actual disability at that time.

Q. You didn't feel then that he was disabled, did you, Doctor?

A. Yes, I did. You have to say disabled for what, and how much. If someone comes in and tells you they are having a lot of trouble, headaches, and so forth, on the first examination I think it is difficult to know exactly what degree he was being disabled, but I think that he was having a lot of disability as far as his work was concerned. He was not physically disabled. He could move his arms and legs all right. He had no definite limitation, and I felt that there might be some type of work which he could do at that time.

Q. You didn't feel that he was totally disabled at that time, did you, Doctor?

A. I thought he was totally occupationally disabled as a physician at that time, but I thought there would be other type of business work he might do.

Q. Doctor, do you recall giving a written report over your signature to the North Western Mutual Life Insurance Company on June 26, 1953, in which, in answer to question 7a, "Is the insured now totally disabled?" You answered, "No." And in answer to question 7b, "From what date has the insured been continuously totally disabled?" And your answer, "Has not been while under my care."

A. Yes, I recall that. Let me qualify that type of disability. That doesn't talk about occupational type of disability. When we talk about being physically disabled, we talk about somebody that cannot function physically, or is completely incapacitated physically; and that was my interpretation, what that meant. I still interpret that the same way. He was not completely physically incapacitated from a physical point of view at that time; but I still maintain, and have in subsequent clarification of that, and had many letters back and forth over this very issue with the same Insurance Company, —clarified that to the best of my ability exactly what I meant.

Q. You made the flat statement in this report that he was not totally disabled, and had not been while under your care, didn't you, Doctor?

A. Yes, may I explain that again.

Q. I believe you have already spent some time on it. Doctor, when you examined this man in January of 1953, you went very quickly over the parts of your report that were negative. As I understand, your neurological examination was negative. Is that correct, sir?

A. Was negative and has always been negative, as it is in so many other illnesses.

Q. I understand, sir. Now, in other words, we can rule out any damage to the brain from every test that you have taken, as organic damage to the brain, can't we?

A. Yes. I think that's true. When we talk about post concussion syndromes we get into a field that isn't well understood, and we are divided into various schools on what is the cause of post concussion headaches, and memory difficulty, and so forth. Some feel that it is all of an emotional basis. One school says, "This is due to the psycho trauma." Others feel that it is due to a,—to which I am adherent,— due to a change in the vascular supply to the brain secondary to the shaking up that produces a liability of blood supply,—that is, a changing in the blood supply which produces dizziness and headaches.

Q. There was no evidence of any arganic injury to this man's brain or to his nervous system, was there?

A. None that I found and could find.

Q. Now putting it another way, there was no objective evidence, no evidence that you could find of an objective nature over which the patient had no control, that he had had a concussion, was there?

A. No. The only way you could have objective evidence of concussion, was to be there and see the patient rendered unconscious. I had no reason not to believe the patient, and I believed the patient, and therefore the diagnosis of concussion is based on history.

Q. That's what I am getting to. Your diagnosis of the post concussion syndrome, must, of course, have been predicated then upon the truth of the history that he gave you, that he had concussion in the first place?

A. That is absolutely true.

Q. And, of course, it is almost ridiculous to say had there been no concussion, then, of course, there would have been no post concussion syndrome?

A. No. But the symptom complex of which he complained did fit, or was compatible with a post concussion syndrome.

Q. It would have been compatible with many other situations, would it not?

A. Compatible to some other situations, not many.

Q. Would it be compatible, or would it not, Doctor, with a general nervous condition, upset condition, induced by many possible things,—trouble in the home, pending litigation?

A. Yes, it could be on an highly emotional basis.

Q. Pending claims?

A. It could be on anything, I think, that would produce a severe emotional response, except all of your headaches, and dizziness—

Q. Doctor, did you ever send this man to a psychiatrist for treatment?

A. I sent my records over to Dr. LeDrew.

Q. You examined him purely for examination purposes, and not for treatment, isn't that true?

A. Yes.

Q. And examined only once?

A. Yes.

Q. Did you ever send this man to a psychiatrist for treatment?

A. No, not for treatment. I sent him to Dr. Jarrett for evaluation.

Q. And he has been with you as a patient for three years, has he not?

A. That's true.

Q. And you find in your opinion psychotic tendencies?

A. Yes, he has psychotic trends.

Q. Now, the treatment of psychiatric diseases and disturbances is not within your field, is it?

A. No. I didn't classify myself as a psychiatrist. I treat many psychoneurotic individuals, and in several instances we take care of psychiatric individuals.

Mr. Carey:
I object to that.

The Court:
Doctor, you can answer the question, and then explain them if you wish. I don't blame the Doctor for making an explaination, because that often happens. Try to answer the questions, and then make your explanation. Answer as concisely as you can.

(By Mr. Carey):
Q. Doctor, my point is thiis. When you say a man is psychotic, that borders on the insane, doesn't it?
A. Yes, if you say he is psychotic—
Q. I didn't say it. I am asking you. Didn't you say this man was psychotic,—didn't I hear the word "psychotic" mentioned in your description—
A. I said he had some psychotic trends. I didn't say he was psychotic. I am talking about the sociological thing, not a medical thing.
Q. Do you think his psychotic trends are so bad that he is incapable of engaging in any form of occupation for pay? You think so, don't you? Isn't that your opinion?
A. No. Is that what I stated?
Q. I understood it to be what you stated, yes, sir?
A. I stated this, that I think that his inability to function mentally efficient enough to be engaged in any occupation, comes from these various sources: One, his basic psychoneurotic tendency. Two, his concussion and post concussion syndrome, which I feel has aggravated his psychoneurotic tendency; and his psycho trends, that is,

his ideas,—delusional ideas about people,—it is a combination of all of those that makes him, in my opinion, so inefficient mentally that he cannot productively carry on an occupation.

Q. Has that disability, in your opinion, continued from the time that you first saw him on January 30, 1953?

A. Yes. I think it has been since that time. He has told me repeatedly—

Q. Doctor, you have answered the question. Now, Doctor,—

Mr. Sams:

He can explain his answer, Judge.

The Court:

The attorney was right. He was not explaining that. The explanation must be confined to the answer. In other words, it must be some explanation and the reason for the answer.

(By Mr. Carey):

Q. And yet, Doctor, feeling in your mind, as you stated here, that he was in that bad shape you have never referred him to a specialist in that field, have you?

A. I referred him to Dr. Paul Jarrett as I told you a moment ago.

Q. And Dr. Paul Jarrett examined him once?

A. I think so. That's the only report I received from Dr. Jarrett. I don't know how many times he went back to Dr. Jarrett.

Q. You don't know whether he received any treatment from Dr. Jarrett, or not. Is that correct?

A. I don't know whether Dr. Jarrett treated him. I think Dr. Jarrett did another electroencephalogram on him, made arrangements to have some more psychome-

tric tests done; and after that I don't know what other contact he had with him.

Q. Now your specialty, Doctor, is that of a neurosurgeon, is it not?

A. That's true.

Q. In other words, your specialty is that of examining and searching out for organic disturbances. Is that correct?

A. Yes. Our field of neurosurgery, if you confine it to just neurosurgery, we are primarily interested in those diseases that can be benefited by operation; but we don't confine our work merely to neurosurgery. You have to find these cases from somewhere, and therefore, in the process of finding them we do a lot of neurology and are frequently engaged in psychiatric determinations to try to determine whether or not this patient has anything of an organic nature, or whether it is highly emotional, which is frequently a problem, so we engaged in the diagnosis of these conditions.

Q. And you determined on every examination that he did not have any organic symptom. Isn't that right?

A. Yes, I did. We were supporting him, and reassuring him in regard to his head injury, which he felt had been severe. Of course, being neurosurgeons, we are primarily engaged or frequently engaged in taking care of people that have symptoms following head injuries.

Q But a psychiatrist, Doctor, would be better qualified to treat a man who has purely a psychiatric condition, which I believe this man has, would he not, than you, sir?

A. I don't think this case needed any other treatment than I was giving him, even though I had referred him to Dr. Jarrett. I think he saw him only a few times, and he preferred to be returned to me. That's a personal

type of relationship that is difficult to control. Some patients like to come back and see you, even though you have referred them to somebody else.

Q. You don't feel then, as I understand it, Doctor, that he needed the treatment of a psychiatrist,—a man specialized in that field?

A. I think he needs the treatment of a psychiatrist right now.

Q. You never recommended that to him, did you, for treatment?

A. I sent him to Dr. Paul Jarrett.

Q. And there was one examination, I understand?

A. I don't know how many times he went there. I think he went back more than once. I have only one report.

Q. He didn't find him disabled, did he?

A. He continued to evaluate him. I have no report from Dr. Jarrett. I have a report of his initial examination in which he requested psychometric testing. I do not have his conclusion after his evaluation of those tests. I don't know what he found.

Q. In other words, you treated this man for three years, but you do not have the conclusions from the psychiatrist to whom you referred him for examination. Is that correct?

A. That's right.

Mr. Carey:

I think that's all.

Re-Direct Examination.

(By Mr. Sams):

Q. Dr. Keedy, Dr. Jarrett is a psychiatrist, is he not?

A. That's right.

Q. Did you also receive a report from Dr. LeDrew?

A. I did. I sent my entire file over to him at his request when he was to evalate the patient.

Q. Did you discuss the treatment that you were giving or carrying out with Dr. Stokes, to Dr. LeDrew and to Dr. Jarrett?

Mr. Carey:

I object to that, and Dr. LeDrew has already testified for the benefit of the jury.

The Court:

What is the purport of this question?

Mr. Sams:

I want to show that this Doctor's treatment,—that they knew what this doctor was doing, and were in accord with it.

Mr. Carey:

That's objected to.

The Court:

That would elicit the consultation again. He has already testified that in his opinnion his treatment was adequate, and it was not necessary for him to refer him to somebody else.

Mr. Sams:

No further questions.

Re-Cross Examination.

(By Mr. Carey):

Q. Doctor, I hand you this report to the North Western Mutual Life, and ask you if that is your signature at the foot of it?

A. Yes.

Mr. Carey:

That's all.

Re-Direct Examination.

(By Mr. Sams):

Q. Your opinion at this time, is it any different in so far as total disability was concerned, at the time when you filled out that report?

A. I didn't get that.

Q. Has your opinion changed since you filled out that report, or is your opinion the same today in so far as total physical disability is concerned?

A. I don't think my opinion has changed any. My opinion has been the same. It is the interpretaion of what disability is, and what disability meant. That seems to be the problem, and I have answered this here, "That the patient will have considerable permanent residual disability," in reference to question No. 9, when they ask, "What in your opinion are the prospects for recovery?" And question No. 17, "Is the insured now totally disabled?" I said, "No," which he isn't totally physically disabled. Even now he is not, and that's my interpretation.

The Court:

Is that totally physically disabled, or totallly disabled?

The Witness:
It says, "Is insured now totally disabled?" It says nothing about physically.

The Court:
I think the Doctor has explained that.

Mr. Sams:
That's all I have, Doctor.

(Thereupon the instrument was marked as Defendant's Exhibit 4 for identification.)

Mr. Sams:
The Plaintiff rests, if Your Honor please.

The Court:
All right. The jury will be excused momentarily.

(Thereupon the jury retired from the Courtroom, at which time the following proceedings were had.)

The Court:
Do you have a motion?

Mr. Carey:
Yes, sir. May it please the Court, the defendant at this time, at the close of the Plaintiff's evidence, respectfully moves the Court to grant a directed verdict in favor of the defendant, and for its reasons, states: One, the plaintiff has failed to prove a prima facie case. Two, it is clear from the evidence that the Plaintiff has failed to prove he was disabled by bodily injury or by sickness so as to suffer total loss of his business time. Three, a verdict in favor of the plaintiff would be contrary to the

facts and the weight of the evidence, and unfounded by the evidence.

The Court:
The motion will be denied.

Mr. Carey:
If the Court please, I should like to move to strike all evidence with respect to a heart condition, or alleged heart condition,—heart attack, in view of the statement of counsel for the plaintiff that they make no contention now that the man was disabled by reason of any heart condition. I feel that the record has been cluttered up, and that they have taken one position at the outset, and have now jumped to an entirely different ground.

The Court:
I am inclined to instruct the jury that they should not consider any evidence of a heart attack as causing any disability, but they may consider a heart condition of the man, if one exists, in their opinion, as bearing upon the question as to whether or not he is permanently disabled.

(Discussion off the record.)

The Court:
I think you need to amend your Complaint to conform to the proof.

Mr. Sams:
All right, sir.

Mr. Carey:
I wish to make an offer in view of Your Honor's ruling on, I believe, at least two motions during the trial,

with respect to the existence of other Policies. I wish to have an offer of proof by Dr. Stokes, as an adverse witness, that he had in existence five Policies, at least five Policies, which would be affected definitely by an adjudication of the claim that he was totally disabled, and as affecting his willingness to confine symptoms, so he built up a case within the realm of his knowledge as to how to do so as a psychiatrist, and that would affect his credibility. And I believe the evidence is most pertinent in this case, and the jury is entitled to know that there were those five Policies. One of them a Life Policy on which the premiums would be waived in the event of total disability, and three of them were Accident and Health Policies, and one of them, I believe, is a straight Accident Policy. And I think it is material at this juncture.

(Discussion off the record.)

The Court:

In view of the turn of this case, it might be that he is feigning this particular mental condition, and I think in honesty to you, you should be permitted to ask him how many claims he made for total disability. Counsel can ask him how many have been rejected, and how many have been accepted, without going into the details. If I were you, I wouldn't go into it.

Mr. Carey:

I don't think I will if that is Your Honor's ruling.

(Thereupon the jury returned to the Courtroom, at which time the following proceedings were had.)

Mr. Carey:

We should like to read into the record the deposition of Dr. Woodford Troutman taken on July 25, 1955. Mr. Dxion, who represented another defendant in another suit—

Mr. Sams:

I object to that being read, Your Honor.

The Court:

Yes. It wasn't taken in this suit, was it?

Mr. Carey:

It was stipulated that the deposition would apply to all of the cases.

(Discussion off the record.)

The Court:

I think we would be wasting time.

Mr. Carey:

All right, sir. There is some cross examination. I am willing to waive it if you will.

Mr. Sams:

I don't care anything about it.

Mr. Carey:

All right, sir. If you have no objection, we can cut this short at this point.

Mr. Sams.:

Yes, all right.

Thereupon: RICHARD E. STRAIN, was called as a witness on behalf of the defendant, and having first been duly sworn, was examined, and testified as follows:

Direct Examination.

(By Mr. Carey):

Q. Will you state your name, please?

A. Richard E. Strain.

Q. What is your occupation?

A. I am a licensed Doctor of Medicine, specializing in surgery of the nervous system.

Q. Would you mind stating briefly for us, sir, your qualifications as a specialist in your field?

A. I graduated from Vanderbilt University Medical School in 1935, and had an internship and assistant residency in surgery at Stamford University Hospital; and then went to China where I spent two years in Lan-chow China General Hospital in charge of surgery there. I returned to this country, and then went to Bombay University where I taught surgery for three years, and then returned to this country and was on the surgical staff and taught at Vanderbilt University Medical School for four years. I then went to Boston where I had a Fellowship and assistant residency and residency in neurosurgery at Boston City Hospital. Had a year and a half Fellowship in neurosurgery at the LeHight Clinic. I am certified by the American Board of Neurological Surgery and a member of various Associations.

Q. And I take it that you are on the staff of various and sundry hospitals around this area?

A. Yes, sir.

Q. Did you as Court-appointed physician examine a man by the name of Dr. Edgar Stokes?

A. Yes, sir.

Q. Was that examination on January 13, 1956?

A. Yes, sir.

Q. Would you tell the jury, sir, what examination you performed on this man, and what your findings were, and your conclusions?

A. At the time I saw him he was complaining of being nervous and having headaches. He gave a history that he had been involved in an automobile accident on February 20, 1952, at which time he was thrown out of his car, and he said that he came to in some water, the accident having occurred near Clewiston. He said he was unconscious at the time, and when he came to his head was out of the water. He was in about four feet of water. He said his right little finger bled some, and he had a bump on the left side of his head. He was taken to a hospital in Clewiston, and he said that at that time he was told he had a hematoma or small blood clot on his abdomen. He did not remember the name of the doctor who saw him in Clewiston, and he says he had considerable pain in his left leg. He was then transferred to the Broward General Hospital where he remained for a week under the care of Dr. Patterson and Dr. Taylor. He states that he has been seen at intervals since that time by Dr. Keedy who first saw him in 1953 because of his nervousness and headaches. He had an electroencephalogram or brain wave test done at the Universitly of Miami. He said that at this time if he was quiet he would not have headaches, but if he gets nervous and upset he would have headaches that came practically every day. These are all over his head with no particular localization. He states he has to use aspirin for these which helps to relieve it some. He has not worked since the accident. When I asked him how he passed the time of day he said he would read the paper, and wash the dishes, and clutter around, more or less. He said he had

had an attack of angina in 1945, and that in 1946 he had a coronary occlusion. In addition he told me that he had had a hematuria, which is passing blood in the urine. He had been cystoscoped seven times. His blood pressure was 120/80. He was a nervous and voluble man. He talked a good deal. In moving his neck all the back motions were freely made and fully made, but he complained his neck hurt when he made extreme motions. In examining his cranial nerves I could find no abnormality. The pupils were equal. His visual fields were full and there was no visual weakness. The cranial nerves all functioned normally.

Q. Would you explain to the jury the significance of what you have just stated as to the examination of the cranial nerves, the pupils being equal, and so forth; what is the significance of that?

A. We divide a neurological examination into several parts. Part of the examination is concerned with the cranial nerves. If people have signs of a blood clot, or they have had severe damage to the brain in which some of the nerves go to the cranial nerves of the brain have been damaged. There may be atrophy in the eyes themselves, or swelling in the nerve root. There may be some facial weakness on one side. All of these tests done to his cranial nerves were normal.

Q. What were you looking for in that particular kind of test?

A. A patient who has had a head injury, we look for some paralysis of some of the cranial nerves. There was no paralysis of his cranial nerves. Sometimes we find a pupil larger on one side than another, which may indicate a blood clot at times, or paralysis of the nerves of the eye. We found nothing there in this examination to suggest any injury there.

Q. All right. Would you go on?

A. The motor system examination or examination of the system that primarily moves the arms and legs, and different parts of the body, we examined the motor system for any weaknesses of the arms and legs for any paralysis of the arms and legs or muscles, or whether there be any trophy of the muscles from injury; and the motor system examination was within normal limits. We examined the sensory system, which is the system concerned with the ability to feel a pin prick, touch, vibration, and we move the arms and toes and fingers in different positions to see if the sensory examination is properly performed. He had no abnormality in the sensory examination.

Q. Doctor, what would you be looking for in making such an examination?

A. Some people in head injuries, they may show a loss of ability to appreciate the form of objects that they fell, so we write numbers on their skin, and if they cannot appreciate that, that's a form of test that shows there has been damage to the lobe of the brain, and the patient may not appreciate the forms of objects that he feels. It may be loss of vibratory sense which we test with a tuning fork. All of these examinations are done to test the function of the brain and nerves. His tests were within normal limits. The next we do what we call a cerebellum test which involves the portion of the brain at the back part of his head that is concerned with balance, for one thing. It is concerned with the inner movement so the movements can be coordinated and made purposefully without rough or jerking movements; and his cerebellum tests were all performed normally. Then the last part of the examination is the testing of the reflexes. We test the reflexes in the arms and legs, to see if there has been any interference with the nerves that go to the arms and legs or brain damage. His reflexes were within normal limit.

Q. Doctor, if some of these signs were positive, what would that indicate?

A. If these signs are positive it would indicate some form of misfunction due to injury. In these instances we found no misfunction so far as these tests were concerned.

Q. In your examination were there any findings of any objective sympstoms or any organic disturbances in this connection?

A. No, sir. All his neurological examination was within normal limits.

Q. What were your conclusions, then, with respect to this patient from your examination as a specialist in your field, neurosurgery?

A. This man now complained of headaches, being nervous following an injury, and his examination neurologically was within normal limits. I felt that the headaches that he complained of were produced by the trauma that he complained of that he had suffered, but there was no sign of any serious damage to his brain, nor to the nerves, from that examination.

Q. Were there any findings in your entire examination, Doctor, other than his subjective complaints, that is, the subjective symptoms,—things that he talked about or complained about?

A. No, sir. This examination was completely normal so far as the neurological examination was concerned.

Mr. Carey:

You may cross-examine.

Cross Examination.

(By Mr. Sams):

Q. Doctor, how long did your examination last, approximately?

A. I didn't time it.

Q. An hour?

A. I would say it took a little longer in this instance than usual.

Q. He is rather a rambling individual in attempting to get a history from, isn't he?

A. Yes.

Q. You say "voluble" in your report?

A. Yes.

Q. It is knid of difficult to get facts straight from him, isn't it?

A. Yes, sir.

Q. Did you make any effort to evaluate him on a psychiatric basis?

A. No, sir.

Q. You restricted your statement solely to the field of his actual motor functions from a neurological standpoint?

A. Yes, sir.

Mr. Sams:

That's all I have, Doctor. Thank you very much.

Re-Direct Examination.

(By Mr. Carey):

Q. Your reason for not attempting to evaluate the psychiatric functions, Doctor, is that because that's in a separate field of specialization?

A. Yes, sir. I am not a psychiatrist.

Q. What is the field of specialization of doctors who would be expected to take care of a man if he were found to be psychotic or have psychotic tendencies?

A. Well, I think that would fall within the realm of a psychiatrist.

Mr. Carey:
That's all. Thank you, Doctor.

Mr. Sams:
Doctor, just a few questions along that line.

Re-Cross Examination.

(By Mr. Sams):
Q. Doctor, do you know Dr. Frederick LeDrew?
A. Yes.

Mr. Carey:
I object, if the Court please, as being irrelevant and immaterial.

The Court:
I sustain the objection.

(By Mr. Sams):
Q. Sir, isn't it true that in the field of neurosurgery many times you are called upon to treat people who are suffering from psychotic tendencies?
A. Well, we do labortories on people who have psychiatric troubles, but we do that after a psychiartrist has felt it was indicated and should be done.
Q. That is a brain operation that is done on people who are sometimes psychoneroutic and sometimes suffering from a great deal of pain?
A. Yes, sir.
Q. And sometimes your diagnosis along with the psychiatrist's diagnosis —
A. We usually accept their diagnosis and perform the surgery.
Q. I am talking about in the treatment of nervous disorders the field sometimes overlaps, does it not?

A. I would say that with psychotic patients we listen to the psychiatrist. Everybody is nervous at times whether they are sick or well. You cannot eliminate nervousness from all patients. People who come to us with a brain tumor are nervous, and we try to treat the nervousness by removing the brain tumor, or assuring them that their trouble is not serious if they think they have a brain tumor and don't have it. That's the way we treat that nervousness.

Q. Do you have patients, Doctor, that you treat who have psychoneurosis or who are psychoneurotic that you are treating in conjunction with some psychiatric advice besides your treatment?

A. I would say that the people that we see who are psychoneurotic, we don't actually treat their psychoneurosis except to assure these people that they have no serious organic trouble. We think that many of the people we see, that we could classify as psychoneurotics, or neurotics, in the sense that they fear, and may have just cause to fear that they harbor some serious disease that we should be treating if they had it. A man who is hit in the head may feel his changes are all secondary to a blood clot pressing on his brain, and we can treat his psychoneurosis by proving to him or to our satisfaction that he was not having a blood clot. If we can get him to accept that fact then he will improve without any particular treatment.

Q. In other words, that's a therapeutic proposition that the neurosurgeon does in saying "You really have nothing wrong with your head. You are perfectly normal. Don't worry about that"?

A. Yes.

Mr. Carey:

You may step down, Doctor. Thank you very much.

(Thereupon Court adjourned until 1:45 p.m. of the same day, at which time counsel, waiving polling of the jury, the following proceedings were had.)

Thereupon: FRANZ H. STEWART, was called as a witness on behalf of the Defendant, and having first been duly sworn, was examined, and testified as follows:

Direct Examination.

(By Mr. Carey):

Q. Will you state your name, please?

A. Franz H. Stewart.

Q. Doctor, where do you have your office?

A. In the duPont Building, Miami, Florida.

Q. Do you have a specialty, sir, in your practice?

A. My specialty is that of internal medicine with an interest, among other things, in cardiographic work.

Q. Will you tell the jury of your medical background and particularly what specialization you have had in the field of heart diseases?

A. I graduated from Emory University Medical School in Atlanta, and then I taught for a short time in Medical School at Columbia, and then I took my postgraduate work there for a year or two, arriving here to practice the specialty of internal medicine in 1935. I have worked through the heart clinics in this area ever since. I have served as President of the Heart Association here. I am a member of the American Board of Internal Medicine, the American College of Biology, the American Federation of Clinical Research, the American College of Physicians. The work here in hospitals has always been in medicine, particularly cardiovascular diseases, but not exclusively. I served for two years as the Chief of Staff at Mercy

Hospital, four years at the Variety Children's Hospital, as Director of the Department of Medicine, and for three years as the Director of the Department of Medicine at Jackson. The last year as the Director and Chairman of the Medical School—

Q. Was that at the University of Miami?

A. Yes, sir.

Q. In your experience that you have just related to us, have you on many, many occasions had occasion to take and interpret electrocardiograms?

A. As part of the routine daily work for the past 20 years.

Mr. Sams:

I would like at this time to interpose an objection to this doctor's testimony. It is my understanding that this doctor has never seen the plaintiff, and I presume he is only going to testify from somebody else's records.

The Court:

Let's don't presume. Let's find out.

Mr. Carey:

I will readily admit he has never examined Dr. Stokes, and the purpose of his testifying today will on a hypothetical question be to examine the hospital records which are admitted into evidence and the electrocardiogram and tracings which are admitted into evidence, and to give us his interpretation of those electrocardiograms and tracings.

The Court:

Proceed.

Mr. Sams:

I object because that is the same thing I was prohibited from doing on the interpretation of the psychometric tests.

The Court:

No. They weren't before us. These are before us. I didn't prohibit you from bringing in records and having them interpreted. I think I made myself clear. If I didn't I apologize.

Mr. Sams:

All right, sir.

(By Mr. Carey):

Q. Doctor, I have shown you the hospital record of an individual by the name of Dr. Edgar W. Stokes ,and a number of electrocardiographic tracings, and discussed them with you, have I not?

A. Yes.

Q. Now, Doctor, assume, if you will, a man of the age of 56, who has for many years practiced as a psychiatrist, and who since approximately 1951 has not been in the active practice, who had a great number of electrocardiographic tracings taken; and assume that this patient relates that he was in an automobile accident on February 26, 1952, and sustained certain injuries, and he alleges that he sustained among other things, a bruise to the forehead, phlebitis, and injuries to the scrotum and penis hematoma,—assume, Doctor, that this patient on May 24, 1954, was admitted to the North Broward Hospital, and that he had the laboratory findings which are shown in those records, and that electrocardiographic tracings were taken of him, which appear in those records; assume further, Doctor, that on May 29, 1946, electrocardiographic trac-

ings were taken by Dr. Woodford B. Troutman, as shown by Plaintiff's Exhibit 8, which I now hand you; and that an electrocardiographic tracing was taken on September 12, 1952, Plaintiff's Exhibit 5, which I now hand you; and a further electrocardiogram, March 26, 1953, being Plaintiff's Exhibit 6, which I now hand you; a further electrocardiogram taken March 26, 1953, Plaintiff's Exhibit 7, which I now hand you; and an additional one on May 24, 1954, being Plaintiff's Exhibit 4, which I now hand you; and a further electrocardiogram, being dated October 4, 1954, being Plaintiff's Exhibit 9, which I now hand you. Now Doctor, with that assumption, that patient, and the records shown, will you examine the records and the electrocardiographic tracings, and read and interpret them to the jury, if you will. Relate to them your findings, if any?

A. I'd like to, if I may, discuss these electrocardiograms as we go along.

Q. Excuse me, Doctor, but I don't think I handed you the original hospital records. This is the one that is in evidence, being Plaintiff's Exhibit 1. I am sorry.

A. As I read these I would like to state that an electrocardiogram is a test which shows you certain electrical impulses which are created in the heart, and that often these impulses will give you quite definite information. It isn't the whole story. As I look at the one of May, 1946, I see nothing which is in any way definite to tell me that there is or is not heart damage. There is the slightest failure of part of the waves to be completely normal to one of the leads in 1946. Again not enough to say, on the basis of this alone, that there is or is not anything wrong with the individual,because of the difficulty of the test itself. There was nothing definitive in that test. The one on September 12, 1952, I would say is entirely normal. The one on March 26, 1953, each

lead is there,—not each lead is there, but those that are present I would say are equally normal; and I notice on this day the next one says, "After exercise tolerance."

Q. Would you explain the significance of that, Doctor?

A. Of course, I don't know just exactly how this test was done, but I assume it was done in the usual fashion; that they took an electrocardiogram first, and finding it normal, decided to put the individual through some work. The usual work is walking up and down a little stairway which is two steps tall, and you walk so many steps according to your age, and your weight, and then we see whether the electrocardiogram was taken after,—whether the electrocardiogram taken after shows any evidence of stress or damage to the heart muscles, which did not show when the heart was at rest; and I would say that the changes seen here after exercise are so slight as to be entirely within the normal response.

Mr. Sams:

What was the date of that?

The Witness:

March 26, 1953. I am holding out here the record I just read of September, 1952, with the idea of comparing it with one of the later ones to see if they are alike or if they are different. Here is May 24, 1954.. Again we see a little change. For your information, in leads 2 and in leads a, b, f, which are the electrical leads we are talking about, there are little defects here, again not completely definitive, but just enough to say, "Look further". Now let's go back, if I may, and compare that with the earlier one. It isn't identical to the one I spoke of as being slightly different in 1946. That's May 24, 1954,—nothing which makes me able to tell you this shows evidence of damage, but I cannot say it is entirely

normal, and we often find such a question when we read these electrocardiograms. That was May. Now into October, 1954.

Q. Would you explain that last remark, Doctor. There are some electrocardiographic changes which represent changes, but which may or may not be representative of anything significant from a cardio standpoint?

A. Yes. An electrocardiogram, surprising as it may seem, certain of these little changes come about from such things as being chilly. For example, a glass of ice water. I don't mean to imply that happened here, but a glass of ice water could give you little changes like that which would make you of necessity take another one, to decide was there something wrong, or was there not. I certainly would have taken another one.

Q. Another electrocardiogram?

A. Yes. A few hours, or perhaps a day later to see whether this was a significant defect, or whether it was just one of these transient unexplained changes which we see as a normal variation. I can't tell you that.

Q. And if there were another one taken, Doctor, within a couple of days following, which was completely normal, and within normal limits, what would you say then as to the significance of the one on May 24 of 1954?

A. Unless it showed some change which suggested a process or a condition which was progressing or changing, or getting better, we would have to say that this was a change completely unexplained, and unless there was some other information found, you couldn't place significance on it.

Q. I think that's clear to the jury. Just go ahead, Doctor, and analyze the others for us?

A. This is October 4, 1954. This one is normal. I would say, unequivocably.

Q. Doctor, getting back to the one of May 24, 1954, for a moment, the attending physician, Doctor, testified that he took numerous electrocardiograms following May 24, 1954, and beginning within a day or so after, and that there were numerous ones taken before, and that the only one in his opinion that showed any abnormality was May 24, 1954, what would then be your opinion with respect to the significance of that one of May 24, 1954? All others being normal, both before and after?

A. I think we would have to conclude that the most reasonable thing is that the electroocardiogram itself, one isolated tracing with normal ones before, and normal ones afterwards, could not alone be taken as evidence that a heart attack had occurred; but at the same time, if this individual was sick, and for other reasons the doctor thought it was, he would be justified, I think, in playing safe, but it would be extremely unlikely for him to have such an attack and not show in the cardiograph, so I would say that you would have to leave this particular one under those circumstances as a question mark, and I couldn't answer what happened.

Q. Would you go ahead with your analysis of the later series?

A. Perhaps it would be interesting to compare these two that were abnormal with different dates.

Q. Anything that you can do for us, Doctor, to come to a conclusion as to whether these electrocardiographic tracings taken in a series are diagnostic for you to give any definite result?

A. Well—

Mr. Sams:

I'd like to interpose an objection to the form of the question and to the type of question, "Anything you can do."

The Court:

I will sustain that objection.

(By Mr. Carey):

Q. Would you explain to the jury the value of having a series of electrocardiograms rather than an isolated one?

A. Indeed. One single electrocardiogram can, if it shows certain changes, tell you this man has had a heart attack. It cannot tell you when he had it. Now unfortunately, even in the presence of a heart attack, one single tracing may not show it. You need two or three over a period of time, and when those are taken over a period of time, sometimes for several days at a time, you can almost always, but not always, get good evidence that this man has had an attack, or that he hasn't. The one tracing will rarely give you the answer to that, so a series or sequence of tracings gives you the story. In other words, as a heart attack begins, there will usually be certain changes in the electrocardiogram which suggest that something is beginning, and then the next day, or perhaps a few days later, the electrocardiogram will look different, and taken in comparison with the first one, will give you good evidence that something is going on. There is a change actually taking place while you are taking them; and sometimes it takes several weeks, and sometimes even months for that sequence of normal changes,—by "normal", I mean accepted in the condition, changes to come about or evolve. Therefore, a sequence of tracings is immensely valuable; and the sequence here does not show, in my opinion, evidence which suggests or tell us that number one started and progressed to number two, and went on to number three, and on down. I use those numbers to indicate changing conditions. I don't mean exact number one, and number two and number three. That I do not see in these tracings.

Q. Is there anything, Doctor, then, in these tracings taken as a series which would enable you to come to a conclusion as a specialist that there is evidence of a coronary condition?

A. One reason that I think we can pay slightly less attention to these two possibly abnormal tracings is that, number one, there is such a tracing in 1946. I think they were before, or, at least, after tracings being normal; and here we see one in 1954 with a change which may or may not be significant, and I am told later ones are normal. For those reasons, I can't find, on the basis of electrocardiogram, the one I have seen, enough to make me from a reasonable opinion that we have evidence of heart disease. I should say these are not definitive evidence of heart disease. The electrocardiogram, as I said, is not the whole story. I haven't seen the doctor.

Q. Doctor, in your experience, do you come to the conclusion that there is such a thing as a coronary type, referring to types of individuals?

A. There has been a lot written on that, and I have tried very hard to think so. I do think there is. If there is, I can't recognize it. I have seen it in every type I can think of. It sure would be nice if that were true.

Mr. Carey:

You may cross-examine.

Cross Examination.

(By Mr. Sams):

Q. Referring first to the electrocardiogram by Dr. Troutman in 1946. I think that's a photostatic copy. I want to ask you this, and ask you if you would agree with it in so far as that electrocardiogram is concerned. Lead one. I presume there are four leads there, aren't there, Doctor?

A. That's correct.

Q. Lead one. The T waves are flat. In lead two there is some notching and slurring of the RS segments. In lead three, a prominent and notched S wave; and in lead four f, the T waves again show flat. The tracing of 1946 shows some abnormality of the T waves in leads one and four, which are not diagnostic, but might suggest some cardiac damage present at that time?

A. The final conclusion, of course, is almost, I believe, what we said,—it could,—it could, or could not be something.

Q. You wouldn't disagree with that, Doctor, would you?

Mr. Carey:

Let the doctor finish his answer.

The Witness:

I wanted to s if I agreed with the description too. I agree with what is being said, that the T wave is rather small in lead one, but I find that it is rather small throughout this tracing, and when one is going to measure the size of a T wave, which is an electrical measurement of an electrical potential, and you see that same thing throughout all four tracings, it raises the question was the standard decision correct, or the tracing technically correct. In other words, if a thousandth of a volt is sent through this instrument, does it measure the right jump that a thousandth of a volt should measure, and unfortunately, on this record, the custom of showing what a thousandth of a volt would show, does not appear, so there is no way for me to judge whether or not the height of these waves, and all of them are depressed, more or less,—whether that is a technical defect, or whether, in fact, they are all depressed. I don't believe that the T wave in one is particularly depressed.

I do think it is in lead 4f, and I think that's the most questionable feature. The slurring that you mentioned in QRS in lead two, is, I think, entirely because that is a small QRS, and it is usually slurred when it is small, and it is of no significance whatsoever. The deep S wave in lead three I do not think is of any significance as far as heart disease is concerned, because that is simply a reversal of the findings which is in lead one, and which has to do with the position of the heart and chest, and that is in no sense, heart disease. I still agree with you that there is a question in lead four f, that may or may not be something.

Q. And the same thing would be true of the one you spoke about on May 24th? That's the second one you spoke of?

A. Yes.

Q. In other words, that's a matter of interpretation; and a great deal would also depend, as I understand from your testimony on any other condition that the man might have had?

A. Of course.

Q. If you had observed him at that time, and saw him to be a person that looked to be in shock, a person who was complaining of a chest pain, who had an elevated sedimentation rate, an elevated white blood count, a low grade fever, all those things would go into your consideration in making some determination as to whether or not there had been some cardial damage?

A. Yes. We would want every bit of information available, and every bit of it would be considered very seriously.

Q. And as I understand your testimony now it is literally impossible for you from just those alone to make any definite statement about whether there is, or isn't?

A. Of course. All I can say is that this does not give us definite information that there was.

Q. You have never seen Dr. Stokes and examined him?

A. No, not to my knowledge.

Q. Have you examined these records before?

A. Yes, sir.

Q. In your office?

A. Photostat copies, I believe.

Q. You have just been employed by the Continental Assurance Company to come over and interpret these and testify here today?

A. I didn't know that.

Q. You are not expecting me to pay you, are you, Doctor?

A. No, sir. I came at Mr. Carey's request.

Q. He represents the Continental Assurance Company?

A. Thank you.

Q. And I presume they are going to pay you?

A. Thanks again. I hope so.

Q. I hope so too, Doctor.

A. I don't have any doubt about that.

Mr. Sams:

That's all.

Mr. Carey:

Thank you, Doctor. That's all. I would like at this time to offer into evidence Defendant's Exhibits 3 and 4 heretofore marked for identification. Any objection?

Mr. Sams:

I have a request, Your Honor. He says he has no more witnesses. I'd like to argue this.

The Court:
All right. The jury will be excused.

(Thereupon the jury retired from the Courtroom, at which time the following proceedings were had.)

The Court:
These are the records, are they not?

Mr. Carey:
Yes, sir. They have been identified; one by Dr. Stokes, and the other one by Dr. Keedy.

Mr. Sams:
We have no objections to stipulating as to what they say, and what the effect of them is. The objection is to the forms that they are on, one from North Western, and one from the Continental Casualty Company.

The Court:
I assume we could blank it out.

(Discussion off the record.)

Mr. Carey:
I have nothing else to offer.

The Court:
Do you have any other witnesses?

Mr. Sams:
No, sir.

Mr. Carey:
May the record show that inasmuch as plaintiff's counsel has objected to the admission into evidence of De-

fendant's Exhibits 3 and 4 for identification for the reason that they both are forms of other Companies, the suggestion has been made that we cut off the names that are on the top of the forms, and that the Clerk identify the tops of these forms so that later, if necessary, they may be put together again for such other uses as may be needed.

The Court:

Mr. Clerk, mark the exhibits, and mark the tops as the same exhibits, and put your initials thereon.

(Thereupon the Exhibits were marked accordingly.)

Mr. Carey:

It is understood that the Court gives us leave to withdraw the tops of Defendant's Exhibits 3 and 4?

The Court:

Leave is granted.

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(Omitted—beginning at Page 208, Line 17, to and including Line 16 at Page 223, which portion contains argument on the requested instructions to the Jury.)

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Mr. Carey:

I think I sshould say at this time in view of counsel's statement that he makes no contention of disability at the present time because of a heart condition, we feel it would be a waste of the Court's time to bring in the further medical witness with respect to his condition at the present time, who was a heart specialist.

The Court:
Counsel has so agreed, as I understand?

Mr. Sams:
Yes, sir.

Mr. Carey:
With that in mind, if the Court please, the defendant rests.

The Court:
All right. Does the plaintiff have any further or other testimony?

Mr. Sams:
No, sir.

The Court:
That being the case, the plaintiff will proceed and address the jury.

(Thereupon counsel argued before the jury.)

* * * * * * * *

(Omitted—beginning at Page 224, Line 10, for the remainder of the transcript, which portion contains the Charge of the Court, the Verdict of the Jury, and the Reporter's Certificate.)

* * * * * * * *

On October 23, 1956 NOTICE OF APPEAL by Defendand was filed in the words and figures as follows:

(Caption Omitted.)

Notice is hereby given that the Defendant, Continental Casualty Co., hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Final Judgment entered herein by the United States District Court for the Southern District of Florida, Miamia Division, on October 1, 1956, filed in the office of the Clerk of the above Court October 2, 1956.

Dated at Miami, Florida, this 23 day of October, 1956.

CAREY & PAPY,
By (S.) WESLEY G. CAREY,
Attorneys for Defendant, Continental Casualty Co.,
548 Seybold Building,
Miami 32, Florida.

I hereby certify that a copy of the foregoing Notice of Appeal was mailed to Anderson & Nadeau, Attorneys for Plaintiff, First National Bank Building, Miami 32, Florida, this 23 day of October, 1956.

(S.) WESLEY G. CAREY,
Of Counsel.

RECITATION.

On October 23, 1956 Supersedeas Bond in the amount of $12,000.00 was filed together with approval by the Honorable Joseph P. Lieb appearing on the bottom of the bond.

On October 23, 1956 STATEMENT OF POINTS AND DESIGNATION OF CONTENTS OF RECORD ON APPEAL was filed in the words and figures as follows:

Filed Oct. 23, 1956.

In the United States District Court for the Southern District of Florida, Miami Division.

Edgar William Stokes, Plaintiff,

vs. No. 5807-M-Civil

The Continental Casualty Co., a corporation, Defendant.

Continental Casualty Co., Defendant, who has taken an appeal from the Final Judgment entered herein on October 1, 1956, states as the points to be relied upon on appeal for the reversal of said Final Judgment the following, severally:

1. The Court erred in making and entering the Final Judgment dated October 1, 1956, and filed October 2, 1956.

2. The Court erred in each of the components of the Final Judgment, to-wit: The Plaintiff should not recover from the Defendant within the policy in question; the Court erred in allowing interest to the date of judgment; the Court erred in allowing attorneys' fees and in the amount thereof, the same being improper and excessive.

3. The Court erred in its findings of fact, particularly Paragraph 5 thereof, and in its conclusions of law, particularly Paragraphs 2, 3, and 4 thereof, which finding of fact conclusions of law were done and ordered on October 1, 1956.

DESIGNATION OF CONTENTS OF RECORD.

1. Recite the filing, and copy in full, the Petition for Removal, together with all exhibits except Summons and Sheriff's return attached thereto, filed September 20, 1954.

2. Recite the filing, and copy in full, the Answer filed February 16, 1955.

3. Recite the filing, and copy in full, the Affidavit of Herbert S. Sawyer filed October 2, 1956.

4. Recite the filing, and copy in full, the Motion to Suppress Affidavit of Herbert Sawyer, filed September 27, 1956.

5. Recite the filing, and copy in full, the Findings of Fact and Conclusions of Law dated October 1, 1956.

6. Recite the filing, and copy in full, the Final Judgment, dated October 1, 1956, and filed October 2, 1956.

7. Recite the filing, and copy in full, the Record of Proceedings had in the trial of this cause, including the record of the trial in the cause entitled Edgar W. Stokes, Plaintiff, vs. Continental Assurance Co., an Illinois corporation, Defendant, No. 5607-M-Civil, in the above styled Court, which record in full was admitted in evidence in the above styled cause by agreement.

8. Recite the filing, and copy in full, all exhibits which were offered in evidence at the trial of this cause, including all exhibits which were offered in evidence in the case entitled Edgar W. Stokes, Plaintiff, vs. Continental Assurance Co., an Illinois corporation, Defendant, No.

5607-M-Civil, in the above styled Court, all of which said exhibits were admitted in evidence in the trial of the above styled cause.

9. Recite the filing, and copy in full, the Notice of Appeal filed October 23, 1956.

10. Recite the filing, and copy in full, the Statement of Points and Designation of Contents of Record on Appeal filed October 23, 1956.

11. Recite the filing and the amount of the Supersedeas Bond and approval of same.

CAREY & PAPY,
By WESLEY G. CAREY,
Attorneys for Appellant, Continental Casualty Co., a corporation,

548 Seybold Building,
Miami 32. Florida.

I hereby certify that copy of the foregoing Statement of Points and Designation of Contents of Record on Appeal was mailed to Anderson & Nadeau, Attorneys for Appellee, First National Bank Building, Miami, Florida, this 23 day of October, 1956.

WESLEY G. CAREY,
Of Counsel.

On November 8, 1956 MOTION and ORDER EXTENDING TIME FOR FILING OF RECORD ON APPEAL was filed in the words and figures as follows:

(Caption Omitted.)

The Defendant-Appellant respectfully shows that the record in the above matter cannot be prepared and transmitted within the time prescribed by law, and that, due to commitments, the Court reporter has not as yet typed up the trial proceedings.

Wherefore, Defendant-Appellant moves the Court for the entry of an order extending the time for the filing of the record on appeal in this cause to and including January 14, 1957.

CAREY & PAPY,
By (S.) WESLEY G. CAREY,
Attorneys for Defendant-Appellant.

548 Seybold Building,
Miami, Florida.

Order Re Transcript.

Upon the foregoing motion the time for filing the record on appeal in the above cause is hereby extended to and including January 14, 1957.

Done And Ordered in Chambers at Miami, Florida, this 7th day of November, 1956.

JOSEPH P. LIEB,
District Judge.

RECITATION.

See Order to Transmit Original Exhibits on page 15 of the Transcript of Record on Appeal in Case No. 5302-Miami-Civil.

United States of America,
Southern District of Florida, ss.

I, JULIAN A. BLAKE, Clerk of the United States District Court, in and for the Southern District of Florida, and as the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 390, inclusive, contain a true, full and complete copy of all such portions of the record, proceeding and evidence in cause styled The Continental Casualty Company versus Edgar William Stokes, number 5807-Miami-Civil, as appear upon the records and files of my office that have been designated by written directions of the appellant to be included in this record on appeal.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Court at Miami, Florida on this 3rd day of January, A.D. 1957.

JULIAN A. BLAKE,
As Clerk of the United States
District Court in and for the
Southern District of Florida.

By EARLE F. SPRIGG,
Chief Deputy Clerk.

(Seal)

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FILED
MAR 24 1958
JOHN T. FEY, Clerk

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS

FIFTH CIRCUIT.

No. 16,472

EDGAR W. STOKES,

Appellant,

versus

THE TRAVELERS INSURANCE COMPANY,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(ORIGINAL RECORD RECEIVED JAN. 5/57.)

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On September 17, 1954 PETITION FOR REMOVAL together with all exhibits attached thereto (with the exception of the Sheriff's return, as per designation) was filed in the words and figures as follows:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION.

No. 5802-M-Civil.

EDGAR W. STOKES,

Plaintiff,

versus

THE TRAVELERS INSURANCE COMPANY, a corporation organized under the laws of the State of Connecticut, qualified to do business in the State of Florida,

Defendant.

The Travelers Insurance Company, by its attorneys, presents and files its petition for the removal of this action from the Circuit Court of the Eleventh Judicial Circuit of the State of Florida, in and for Dade County, in which Court this action is pending, to the District Court of the United States in and for the Southern District of Florida, Miami Division, being the district and division within which this action is pending, and show unto the Court as follows:

1. This suit is pending in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, and this petition for removal is filed within the time provided by law.

2. That this action is one of a civil nature of which the District Court of the United States has original jurisdiction in that it involves a controversy wholly between parties of different states, and that the amount in controversy, exclusive of interest and costs, exceeds the sum or value of Three Thousand Dollars ($3000.00).

3. That the plaintiff is and was at the time of the institution of this action, a citizen and resident of the State of Florida.

4. That the defendant is and was at the time of the institution of this action, a corporation organized and existing under the laws of the State of Connecticut.

5. Petitioner files herewith a bond with good and sufficient surety under the statute in such cases made and provided, conditioned as the law directs that the defendant will pay all costs and disbursements incurred by reason of this removal proceedings, should it be determined that this case was not removable or was improperly removed,

6. Written notice of the filing of this Petition for Removal and bond has been given to all adverse parties, and a copy of this Petition has this date been filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County,

7. Petitioner attaches hereto and files herewith a copy of the Summons and Complaint and said documents constituting all processes and pleadings served upon it in this case,

Wherefore, petitioner prays that this Court take jurisdiction of this action, and that the removal of this action to this Court be hereby effected.

Dated at Miami, Florida, this 17th day of September, A. D. 1954.

DIXON, DeJARNETTE & BRADFORD,
By (S.) H. REID DeJARNETTE,
Attorneys for Petitioner.

908 First National Building,
Miami 32, Florida.

State of Florida,
County of Dade. ss.

Before me, the undersigned authority, this day personally appeared H. Reid DeJarnette, who being first duly sworn, deposes and says: that he is a member of the firm of Dixon, DeJarnette & Bradford, attorneys of record for the defendant, The Travelers Insurance Company herein; that he has read the foregoing petition and that the matters and things therein are true.

(S.) H. REID DeJARNETTE.

Subscribed and Sworn to before me this 17th day of September, 1954.

(S.) E. C. KAIN,
Notary Public, State of Florida.

(Notary Seal.)

My commission expires 7-16-55.

Certificate of Clerk.

I, E. B. Leatherman, as Clerk of the Circuit Court in and for Dade County, Florida, certify that a copy of the foregoing Petition for Removal has this date been filed with me.

Dated at Miami, Florida, this 17th day of September, A. D. 1954.

E. B. LEATHERMAN
Clerk of the Circuit Court,
Dade County, Florida,
By (S.) JOAN COURNOYER,
(Seal) Deputy Clerk.

COMPLAINT FOR DECLARATORY DECREE.

In the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. In Chancery.

Edgar W. Stokes, Plaintiff,
vs. No. 172109.
The Travelers Insurance Company, a corporation organized under the laws of the State of Connecticut qualified to do business in the State of Florida, Defendant.

1. On December 4, 1943, the defendant, The Travelers Insurance Company, a corporation organized under the laws of the State of Connecticut, qualified to do business in the State of Florida, for a valuable consideration, executed and delivered to the plaintiff, Edgar W. Stokes, a health and accident policy, a photostatic copy of which is attached hereto.

2. Plaintiff paid to the defendant all premiums required to be paid pursuant to the terms and provisions of said policy.

3. On February 26, 1952 while the aforementioned policy was in force and effect, the plaintiff was involved in an automobile accident, the proximate result of which was that he was rendered totally disabled within the terms of said policy.

4. The defendant made payments to the plaintiff in accordance with the terms and provisions of said policy to and including September 10, 1952, at which time it refused to make any further payments to the plaintiff.

5. At all times subsequent to February 26, 1952, the plaintiff has been totally disabled within the terms and provisions of said policy, and said policy has been in force and effect.

6. The plaintiff has made demand upon the defendant for the payment of total disability benefits, as provided for in said policy, but said demand has been refused.

7. The plaintiff has engaged the services of his attorneys of record and has agreed to pay to them a reasonable fee.

Wherefore, plaintiff prays:

1. That the Court will take jurisdiction of the subject matter and of the parties.

2. That the Court will enter a declaratory decree adjudicating whether or not the plaintiff is totally disabled within the meaning of the policy, and determining the benefits, if any, to which the plaintiff is entitled under the terms of said policy.

3. That the defendant be required to pay to the plaintiff's attorneys of record a reasonable fee for their services.

J. FRITZ GORDON and
ANDERSON & NADEAU,
By (S.) THOMAS H. ANDERSON,
Attorneys for Plaintiff.
904 First National Bank Bldg.,
Miami 32, Florida.

On December 16, 1954 ANSWER of Defendant was filed in the words and figures as follows:

(Caption Omitted.)

Comes now the defendant in the above styled cause, and for answer to the complaint filed therein says:

1. The complaint fails to state a claim upon which relief can be granted.

2. The defendant denies the allegations of paragraphs 3, 4, 5 and 6.

DIXON, DeJARNETTE &
BRADFORD,
By (S.) JAMES A. DIXON,
Attorneys for Defendant.
908 First National Bank Building,
Miami, Florida.

I Certify that on this 15th day of December, 1954, a copy of the foregoing Answer was mailed to J. Fritz Gordon and Anderson & Nadeau, 904 First National Bank Building, Miami 32, Florida, the attorneys for the plaintiff herein.

DIXON, DeJARNETTE & BRADFORD,
By (S.) JAMES A. DIXON,
Attorneys for Defendant.
908 First National Bank Building,
Miami, Florida.

RECITATION.

As to Item 3 of the Designation, being Transcript of Trial Proceedings had in this cause and 5607-Miami-Civil, see the Transcript of Trial Proceedings in Case No. 5807-M-Civil which is being transmitted at the same time as this record on appeal.

Said transcript of trial proceedings begin on page 16 of that record on appeal.

On October 8, 1956 FINDINGS OF FACT AND CONCLUSIONS OF LAW was filed in the words and figures as follows:

(Caption Omitted.)

This Cause came on before me for trial, neither party having requested trial by jury, upon issues made in the pleadings, the Court, after having heard

the testimony adduced by the parties and argument of counsel, finds the following facts:

Findings of Fact.

1. The plaintiff is a citizen and resident of the State of Florida. The defendant is a corporation organized under the laws of the State of Connecticut and qualified to do business in the State of Florida. The matter in controversy exceeds the sum or value of Three Thousand ($3,000.00) Dollars exclusive of interest and costs.

2. That the defendant issued to the plaintiff a policy of insurance, a copy of which is attached to the complaint, and which was admitted in evidence in this cause, and that said policy of insurance was in full force and effect on February 26, 1952.

3. That upon the aforesaid date, the plaintiff was involved in an automobile accident near the City of Clewiston, Florida.

4. That the defendant, The Travelers Insurance Company, is liable to the plaintiff, Edgar W. Stokes, only if the plaintiff is permanently and totally disabled from injuries brought about solely by the aforesaid automobile accident within the meaning of the provisions of said policy, and that the said defendant is not liable to the plaintiff for disabilities, if any, arising independent of his injuries in the aforesaid accident, or disabilities, if any, which were aggravated by the aforesaid accident.

5. That the disabilities of the plaintiff from September 10, 1952 to the present time, and under which he is laboring at the present time, are conditions which existed prior to the aforesaid automobile accident, and if affected at all by the said accident were merely aggravated, and that his present disabilities were not brought about solely by the said accident within the meaning of the provisions of the defendant's policy of insurance, or, in the case of the plaintiff's claimed heart condition, if any, were unconnected with the aforesaid automobile accident or any other accidental occurrence within the coverage afforded by the aforesaid policy of insurance.

6. Having found the foregoing facts to be true, the Court finds it unnecessary to decide the issue of whether or not the plaintiff is permanently and totally disabled within the meaning and provisions of the aforesaid policy of insurance.

Conclusions of Law.

1. It is found that this Court has jurisdiction of the parties and the subject matter.

2. The plaintiff, Edgar W. Stokes, is not entitled under the facts adduced before this Court to any of the benefits of the policy of insurance issued by the defendant, The Travelers Insurance Company, from September 10, 1952 forward.

3. The plaintiff is not entitled to recover reasonable attorneys' fees for the services of his attorneys in prosecuting this suit.

4. The defendant, The Travelers Insurance Company, is entitled to a judgment for its costs incurred by it in defending this suit, the amount of which will be determined on a verified cost bill and after notice to the plaintiff.

5. A judgment in accordance with these findings will be entered.

Done and Ordered this 8th day of October, A. D. 1956 at Miami, Dade County, Florida.

JOSEPH P. LIEB,
District Judge.

On October 8, 1956 FINAL JUDGMENT was filed in the words and figures as follows:

(Caption Omitted.)

This Cause coming on before me for trial, without a jury, and the Court having heard the testimony adduced for it, and having considered the same, and having heard argument of counsel, and having heretofore entered certain findings of fact and conclusions of law with respect to the issues in this cause, it is hereupon

Ordered and Adjudged that this Court has jurisdiction of the parties to this suit and the subject matter hereof, and it is further

Ordered and Adjudged that final judgment be, and it is hereby entered in favor of the defendant, The

Travelers Insurance Company a corporation organized under the laws of the State of Connecticut, and against the plaintiff, Edgar W. Stokes, and that the defendant, The Travelers Insurance Company, go hence without day, and it is further

Ordered and Adjudged that the defendant, The Travelers Insurance Company, have and recover of the plaintiff, Edgar W. Stokes, its costs expended in this cause, said costs to be taxed by the Clerk of this Court.

Done and Ordered this 8th day of October, A. D. 1956 at Miami, Dade County, Florida.

JOSEPH P. LIEB,
District Judge.

On October 30, 1956 NOTICE OF APPEAL by Plaintiff was filed in the words and figures as follows:

(Caption Omitted.)

Notice Is Hereby Given that the Plaintiff, Edgar W. Stokes, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered herein by the United States District Court for the Southern District of Florida, Miami Division, on October 8, 1956.

Dated at Miami, Florida, this 24 day of October, 1956.

ANDERSON & NADEAU,
By (S.) THOMAS H. ANDERSON,
Attorneys for Plaintiff.

908 First National Bank Building,
Miami 32, Florida.

I Hereby Certify that copy of the foregoing Notice of Appeal was mailed to Dixon, DeJarnette, Bradford & Williams, Esqs., Attorneys for Defendant, Ainsley Building, Miami 32, Florida, this 24 day of October, 1956.

(S.) THOMAS H. ANDERSON.

On October 30, 1956 STATEMENT OF POINTS was filed in the words and figures as follows:

(Caption Omitted.)

Edgar W. Stokes, who has taken an appeal from the final judgment entered herein on October 8, 1956, states as the points to be relied upon on appeal for the reversal of said final judgment, the following severally:

1. The Court erred in entering judgment for the defendant.

2. The Court erred in making and entering the Findings of Fact and Conclusions of Law dated October 8, 1956.

3. The Court erred in finding in Paragraph 4 of the Findings of Fact that the defendant is not liable to the plaintiff for disabilities which were aggravated by the accident which occurred on February 26, 1952.

4. The Court erred in finding that the disabilities from which the plaintiff is presently suffering were not brought about by reason of the said accident with-

in the meaning of the policy, or in the case of the plaintiff's heart condition were unconnected with the accident, or any other accidental occurrences.

5. The Court erred in its Conclusion of Law in finding that the plaintiff was not entitled to any of the benefits on the policy of insurance issued by the defendant, The Travelers Insurance Company.

ANDERSON & NADEAU,
By (S.) THOMAS H. ANDERSON,
Attorneys for Appellant.
908 First National Bank Building,
Miami 32, Florida.

(Certificate of mailing.)

On October 30, 1956 DESIGNATION OF CONTENTS OF RECORD was filed in the words and figures as follows:

(Caption Omitted.)

1. Recite the filing and copy in full the Petition for Removal, together with all the exhibits, except the Summons and the Sheriff's return, said Petition having been filed September 17, 1954.

2. Recite the filing and copy in full the Answer of the defendant filed December 16, 1954.

3. Recite the filing and copy in full the record of the proceedings had in the trial of this cause, including the record of the trial of the case entitled "Edgar

W. Stokes, Plaintiff, v. Continental Assurance Company, Defendant" No. 5607-M-Civil.

4. Recite the filing and copy in full all of the exhibits which were offered in evidence in the trial of this cause, including the evidence in the preceding direction.

5. Recite the filing and copy in full the findings of fact and conclusions of law dated October 8, 1956.

6. Recite the filing and copy in full the final judgment dated October 8, 1956.

7. Recite the filing and copy in full the Notice of Appeal filed October ..., 1956.

8. Recite the filing and copy in full the Statement of Points and Designation of Contents of Record on Appeal, filed October ..., 1956.

ANDERSON & NADEAU,
By (S.) THOMAS H. ANDERSON,
Attorneys for Appellant

908 First National Bank Building,
Miami 32, Florida.

(Certificate of mailing.)

On November 9, 1956 MOTION TO EXTEND TIME FOR FILING OF TRANSCRIPT AND ORDER RE-TRANSCRIPT was filed in the words and figures as follows:

(Caption Omitted.)

The Plaintiff-Appellant respectfully shows that the record in the above matter cannot be prepared and transmitted within the time prescribed by law, and that, due to commitments, the Court Reporter has not as yet typed up the trial proceedings.

Wherefore, Plaintiff-Appellant moves the Court for the entry of an order extending the time for the filing of the record on appeal in this cause to and including February 1, 1957.

ANDERSON & NADEAU,
By (S.) THOMAS H. ANDERSON,
Attorneys for Plaintiff-Appellant.
908 First National Bank Building,
Miami 32, Florida.

Order Re Transcript.

Upon the foregoing motion, the time for filing the record on appeal in the above cause is hereby extended to and including January 28, 1957.

Done and Ordered in Chambers at Miami, Florida, this 9th day of November, 1956.

JOSEPH P. LIEB,
District Judge.

On December 20, 1956 ORDER TO SEND ORIGINAL EXHIBITS ON APPEAL was filed in Case Nos. 5802-M-Civil and 5807-M-Civil, and is in the words and figures as follows:

(Caption Omitted.)

On stipulation of the parties to both of the above causes, it is hereby

Ordered that the Clerk of this Court forward to the Clerk of the United States Court of Appeals for the Fifth District, as part of the record on appeal on each of the above cases:

1. The original exhibits admitted into evidence in the trial of Edgar Stokes vs. Continental Assurance Company, 5607-M-Civil, which were incorporated as exhibits and admitted into evidence in the trial of the above two causes; and

2. All other original exhibits admitted into evidence at the trial of the above two causes.

The Clerk of this Court is directed to place a copy of this order in the files of each of the cases numbered 5607, 5802 and 5807, and to docket this order in each of said cases.

Done and Ordered this 20th day of December, 1956.

JOSEPH P. LIEB,
United States District Judge

Stipulation.

It is hereby stipulated by and between the parties to the above causes that the foregoing order be entered by the Court.

ANDERSON & NADEAU,
Attorneys for Edgar W. Stokes,
Plaintiff in both cases,
By (S.) THOMAS H. ANDERSON,
Of Counsel.

DIXON, DeJARNETTE, BRADFORD & WILLIAMS,
Attorneys for Travelers Insurance Company,
By (S.) JAMES A. DIXON, JR.,
Of Counsel.

CAREY & PAPY,
Attorneys for Continental Casualty Co.,
By (S.) WESLEY S. CAREY,
Of Counsel.

United States of America,
Southern District of Florida. ss.

I, JULIAN A. BLAKE, Clerk of the United States District Court, in and for the Southern District of Florida and as the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 15, inclusive, contain a true, full and complete copy of all such portions of the record, proceedings, and evidence in cause styled Edgar W. Stokes versus The Travelers Insurance Company, number 5802-Miami-Civil, as appear upon the records and files of my office that have been designated by written directions of the appellant to be included in this record on appeal.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Court at Miami, Florida on this the 3rd day of January, A. D. 1957.

JULIAN A. BLAKE,
As Clerk of the United States
District Court in and for the
Southern District of Florida,
By EARLE F. SPRIGG,
Chief Deputy Clerk.

(Seal)

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Office - Supreme Court, U.S.
FILED
MAR 24 1958
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 875

EDGAR W. STOKES,

Petitioner,

vs.

THE TRAVELERS INSURANCE COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Neal P. Rutledge
Counsel for Petitioner
835 duPont Building
Miami 32, Florida

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AUTHORITIES CITED

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1957

No.————

EDGAR W. STOKES,

Petitioner,

vs.

THE TRAVELERS INSURANCE COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-styled cause on November 8, 1957.

CITATIONS TO OPINIONS BELOW

The United States District Court in and for the Southern District of Florida, Miami Division, rendered no opinion in this cause. Its Findings of Facts and Conclusions of Law and its Final Judgment appear in the

printed transcript of record (nine copies of which are submitted herewith) at pages R. 7-11. The opinion of the United States Court of Appeals, Fifth Circuit, is printed in Appendix A hereto, infra, pp. 15-18, and is reported in 249 F. 2d 155. The opinion in the companion case hereto of **Continental Casualty Co. v. Stokes**, 249 F. 2d 152, is printed in Appendix B, infra, pp. ~~21-25.~~ 19-23.

JURISDICTION

The judgment of the United States Court of Appeals, Fifth Circuit, was entered on November 8, 1957 (R. 24; p. 18, infra). A timely petition for rehearing was filed November 29, 1957 (R. 25), and rehearing was denied December 24, 1957 (R. 27). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

Question One

Where two cases are consolidated for trial before a United States District Judge, without a jury, and where both cases are tried on exactly the same evidence, is it reversible error for the Trial Judge to make inconsistent findings of fact in the two consolidated cases?

Question Two

Whether the Court of Appeals misapplied Florida law in ruling that an insurance policy which provides indemnity for total disability "resulting directly and independently of all other causes from bodily injuries" effected solely through accidental means does not apply when an insured is rendered totally and permanently dis-

abled in a severe automobile accident by a brain concussion which either activates or aggravates a pre-existing psycho-neurotic tendency.

STATEMENT

[Note: See footnote explanation below concerning record references contained in this Petition.][1]

This suit was originally brought in the Florida Circuit Court, Dade County, Florida, by petitioner seeking a declaratory decree as to petitioner's right to benefits under an accident insurance policy issued by respondent (R. 4-6). The case was removed by respondent to the United States District Court for the Southern District of Florida whose jurisdiction was invoked because of diversity of citizenship, the petitioner being a citizen of Florida and respondent being a citizen of Connecticut (R. 1-3).

In the District Court trial of this cause was consolidated with the trial of a companion case, Stokes v. Con-

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[1]Due to the consolidation of this case with a companion case in the District Court below, the complete printed record in this case appears in both the printed transcripts of record of Court of Appeals Case No. 16,472, Edgar W. Stokes v. The Travelers Insurance Co., and of Court of Appeals Case No. 16,453, Continental Casualty Co. v. Edgar W. Stokes (R. 11). Accordingly, certified copies of both printed transcripts of record (together with nine additional copies of each) have been filed herewith. References to the transcript of record in case No. 16,472 will be designated by the letter "R" and references to the transcript of record in case No. 16,453 by the letter "T". Likewise, since the insurance policy here involved does not appear in either transcript of record, but was forwarded to the Court of Appeals as an original exhibit, the original exhibit has also been forwarded to this Court under the certificate of the Clerk of the Court of Appeals and by order of United States Circuit Judge Tuttle.

tinental Casualty Co., and both cases were tried before the District Judge without a jury on precisely the same evidence (T. 19).

The issue in the companion (or Continental Casualty Co.) case concerned whether or not petitioner was disabled by either accidental injury or by sickness so as to suffer a total loss of business time within the coverage of an accident and health insurance policy. The District Judge found that petitioner was totally and permanently disabled "at all times *since February 26, 1952*, and possibly for some time prior thereto" (emphasis added) by reason of sickness and awarded petitioner judgment against the Continental Casualty Company (T. 12-17). This judgment was affirmed by the Court of Appeals, Fifth Circuit, at 249 F. 2d 152.

In the instant case, the issue was whether or not petitioner was wholly and continuously disabled solely and exclusively as a result of bodily injuries sustained in an automobile accident occurring *on February 26, 1952*. (See Policy exhibit; see also pleadings, R. 4-7.) The District Judge found in this case that petitioner's disabilities definitely existed prior to the automobile accident on February 26, 1952, and were merely aggravated by the accident, if affected at all by it, and rendered judgment in favor of respondent (R. 7-11). This judgment was likewise affirmed by the Court of Appeals, and it is this decision which is here sought to be reviewed.

The evidence in the case consisted in part of the policy of insurance which provided for the payment of a weekly indemnity of Fifty Dollars if the insured became wholly and continuously disabled resulting directly and inde-

pendently of all other causes from bodily injuries sustained during the term of the policy and effected solely through accidental means. (See original exhibit of policy forwarded to this Court.) Other evidence consisted of the testimony of nine physicians and of Dr. and Mrs. Stokes, as follows:

Dr. Stokes: Dr. Stokes testified that he was a 58-year-old physician (T. 274-275); that he had operated a private psychiatric hospital in Louisville, Ky., most of his life (T. 274); that he had suffered from a heart condition and from essential hematuria prior to 1950 (T. 276); that in 1950 he sold his sanitarium and after winding up the sale and his affairs in 1951 came down to Florida to establish residence and to go into mental hygiene work (T. 275-277); that on February 26, 1952, while driving near Clewiston, Florida, to investigate an opening in that field, he had an automobile accident during a rain storm in which his automobile turned over three times and landed in a canal full of water (T. 277-278, 43); that he was bruised all over, knocked-out, and severely injured in the accident (R. 278-283, 43-45); that he was subsequently hospitalized for the accident (T. 282); and that ever since the accident he has been highly nervous, exhausted, subject to headaches, confused, hearing strange noises in his ears, and unable to work (T. 283, 47-49). It further appeared that the policy was in effect on the date of the accident and that the respondent had paid the weekly indemnity to petitioner for approximately six months following the accident (T. 37-40).

Mrs. Stokes: Mrs. Stokes testified concerning Dr. Stokes' strange and unbalanced behavior since the acci-

dent (T. 304-306), and that he has been unable to work or tend to his affairs since the accident (T. 305-306).

Dr. Keedy: Dr. Keedy, a neurosurgeon and specialist in diseases and injuries of the brain (T. 311), testified that he had observed and treated petitioner every six to eight weeks over a three-year period prior to trial and since the accident (T. 313); that Dr. Stokes was not feigning or trying to exaggerate his disabilities (T. 318); that he was suffering from a post concussion syndrome which was manifested by mild headache, forgetfulness, difficulty in concentration, and irritability (T. 316); that the concussion and the psychic trauma he received in the automobile accident of February 26, 1952, markedly aggravated a pre-existing psychoneurotic tendency which Dr. Stokes had (T. 318-319); that Dr. Stokes is occupationally completely disabled (T. 322); that such disability existed *certainly* from the time of the accident (T. 324); and that the complete disability is caused by Dr. Stokes' basic psychoneurotic tendency, together with the concussion and post concussion syndrome which aggravated such tendency (T. 328-329).

Dr. Strickler: Dr. Strickler, an eminent traumatic surgeon (T. 132), testified that in his opinion petitioner had sustained a severe concussion in his automobile accident of February 26, 1952 (T. 136); that he had suffered permanent, incurable, brain damage from this concussion (T. 138-140); that he is disabled thereby from practicing medicine (T. 139-140) or from doing any work at all (T. 154); and that such disability was sustained as a result of the automobile accident (T. 150). In addition, Dr. Strickler expressed his opinion that petitioner was not feigning or exaggerating his disability (T. 146).

Dr. Ledrew: Dr. Ledrew, a psychiatrist, testified that he had examined Dr. Stokes on behalf of the Continental Casualty Company on October 21, 1953, and had concluded then that Dr. Stokes was unable to work at that time (T. 268-269).

Dr. Taylor: Dr. Taylor, the general surgeon who treated petitioner in the hospital following the automobile accident (T. 228), testified that as a result of the accident petitioner was bruised all over, particularly the head, the arms, the lower trunk and the thighs, shin, and heel, and that he was pretty black and blue all over and swollen (T. 228); that he had suffered a head injury causing the left forehead to be discolored, bruised, swollen and abrased (T. 229) and a brain concussion (T. 230); that Dr. Stokes did not progress satisfactorily toward recovery and was not getting well (T. 236); and that Dr. Stokes is permanently disabled to practice medicine (T. 239-240).

Dr. Dornberger: Dr. Dornberger, an internist (T. 185), treated Dr. Stokes for a mild heart attack in 1954 (T. 187, 189, 190-191). He testified that Dr. Stokes is totally disabled (T. 203, 205); that the disability stems from Dr. Stokes' anxiety and mental condition (T. 212-213); that Dr. Stokes' heart condition in itself was not disabling, but that the disability derived from his residual symptoms from his auto accident and head injury (T. 207); and that Dr. Stokes needs psychiatric help (T. 213).

Dr. Troutman: Dr. Troutman, a heart specialist, testified that he examined Dr. Stokes in October, 1954, and that he did not demonstrate at that time any coronary disease (T. 158, 163-164).

Dr. Stewart: Dr. Stewart, a heart specialist, testified that he examined certain electrocardiograms of Dr. Stokes and that these gave no definitive evidence of heart disease (T. 354).

Dr. Atherton: Dr. Atherton, a urologist (T. 102), testified that he examined Dr. Stokes in December, 1952, for the Equitable Life Insurance Company (T. 103); found no organic pathology or physical impairment (T. 103); that Dr. Stokes was more nervous and highstrung than usual (T. 104-105); and that in his opinion Dr. Stokes was not totally and permanently disabled (T. 105, 119).

Dr. Strain: Dr. Strain, a neuro-surgeon (T. 338), testified that the results of a neurological examination of Dr. Stokes were within normal limits insofar as his actual motor functions from a neurological standpoint were concerned (T. 342-343). He further testified that in his opinion that the headaches Dr. Stokes complained of were produced by the trauma of the accident (T. 342).

On the basis of the foregoing evidence, the District Judge found in the case of **Stokes vs. Continental Casualty Co.** that Dr. Stokes is totally and permanently disabled and that such disability had lasted *at all times since February 26, 1952, the date of the accident, and* only *possibly* had existed prior thereto (T. 14-15). However, in the instant case, the same District Judge on exactly the same evidence, found that Dr. Stokes' disabilities definitely existed *prior* to the automobile accident and, if affected at all by the accident, were merely aggravated (R. 9). The Court further ruled that under the policy here involved, petitioner was not entitled to recover if his disability was aggravated by the automobile accident (R. 8).

Accordingly, the District Court entered judgment in favor of petitioner against the Continental Casualty Company in the companion case and judgment against petitioner in the instant case. The Court of Appeals affirmed both judgments. 249 F. 2d 152 and 249 F. 2d 155.

REASONS FOR GRANTING WRIT

Question One

Petitioner submits that the District Court here clearly has made inconsistent findings of fact in two cases which were consolidated and tried together on precisely the same evidence. In the **Continental Casualty** case, the District Judge found petitioner totally disabled from the time of the accident on—or, in other words, that the accident itself necessarily was the event which caused or started the total disability. In the instant case, however, the District Court made exactly the opposite finding—i.e., that petitioner's disabilities existed prior to the accident and if affected at all, were only aggravated.

In each case the District Court was dealing with the same man, the same accident, the same disability, and the same evidence. It is respectfully submitted that to permit a trial Judge, in such a situation, to make such inconsistent findings arbitrarily is to reduce the judicial process of fact-finding to the level of Alice-in-Wonderland nonsense, where black becomes white simply by virtue of being called white.

Petitioner's total disability either began on February 26, 1952, when he had his automobile accident, or it did not. To permit a Federal District Judge to find both

ways on this question *on the same evidence* is to admit that the goal of the judicial process is not the discovery of truth.

This is not the situation, of course, where two different fact-finders reach different conclusions from the same evidence, which is readily understandable as reasonable men may well draw different inferences or give different weight to the same evidence. Here, however, a single fact-finder in his capacity as a Federal Judge is permitted on identical evidence to find a particular fact is true in one case, and not true in a companion, consolidated case. This can only be the result of an arbitrary exercise of sheer power to find facts irregardless of the evidence.

Petitioner respectfully submits that the question of the District Court's power to make inconsistent findings in consolidated cases tried on the same evidence is one of importance to the whole Federal judicial system and should appropriately be settled by this Court.

Question Two

There is no evidence in this case that petitioner was totally disabled *prior* to the automobile accident on February 26, 1952. The only evidence concerning the origin of petitioner's disability comes from: (1) petitioner himself, who testified he was able to work and was making himself available for employment for which he was prepared at the time of the accident, and that he was unable to work after the accident; (2) Dr. Strickler, who testified the disability was caused by a severe concussion received in the automobile accident of February 26, 1952

which concussion had caused permanent and incurable brain damage; and (3) Dr. Keedy, who testified that the disability was caused by a basic psychoneurotic tendency which was aggravated or activated by the brain concussion received in the automobile accident, and that he could only say with certainty that the disability had existed since the accident. No insurance company witness or other witness testified as to the cause or origin of Dr. Stokes' disability.

Petitioner respectfully submits that taking the above described evidence in a light most favorable to respondent, it nevertheless conclusively appears that petitioner's total disability is either the direct result of brain damage received in the automobile accident of February 26, 1952, or is the direct result of the aggravation or activation of a pre-existing psychoneurotic tendency caused by a brain concussion and head injuries received in the automobile accident.

In either event, under the law of Florida, petitioner should be entitled to recover under an accident policy such as the one here involved. But the District Court and the Court of Appeals erroneously concluded that if the total disability was merely the result of the aggravation of a pre-existing condition, then no recovery could be had under the policy. In so construing the insurance contract here involved, it is respectfully submitted that the Courts below decided an important question of Florida law in conflict with applicable decisions of the Florida Supreme Court, and that accordingly, this petition should be granted. See Rule 19(b), Rules of Supreme Court of the United States.

The conflict between the Courts below and applicable

Florida law appears, first of all, in the failure of the District Judge and the Court of Appeals to apply Kentucky law to the insurance contract here involved since the contract had originally been issued and came into effect in Kentucky, where petitioner then resided, and itself makes numerous references to the law of the insured's residence at the time of issuance as controlling. (See original exhibit of insurance policy.) Under such circumstances, a Florida court would apply Kentucky law to the contract. **Pace v. Pace** (1882), 19 Fla. 438; **Sovereign Camp W. W. v. Mixon** (1920), 79 Fla. 420, 84 So. 171; **Equitable Life Assur. Soc. v. McRee** (1918), 75 Fla. 257, 78 So. 22; **Columbian Nat. Life Ins. Co. v. Lanigan** (1944), 154 Fla. 760, 19 So. 2d 67.

Under Kentucky law, it is likewise clear that an accident policy such as the one here involved does apply and cover the situation where accidental bodily injuries activate or aggravate a mental condition which in turn causes disability or death. Thus, in **Provident Life and Accident Ins. Co. v. Watkins**, 256 Ky. 645, 76 S. W. 2d 889, the Kentucky Court held that an accident policy in all respects similar to the instant one did apply to an insured who suffered an accidental head injury, as a result of which he developed mental aberrations and psychosis, as a result of which he became insane, as a result of which he refused to eat and therefore starved to death. The Court expressly over-ruled the insurance company's contention that the death was not, in such a case, caused solely and independently of all other causes by an external violent accident, but was partly by disease. See also **National Life and Accident Ins. Co. v. Cox**, 174 Ky. 683, 192 S. W. 636, where a death caused by pneumonia activated by the trauma of falling down stairs was covered by an accident

policy such as is here involved. As stated by the Kentucky Court in **Mutual Gen. Health and Accident Ass'n v. Weber**, 299 Ky., 846, 187 S. W. 2d 273, the fact that an insured may have some disabilities prior to an accident does not relieve an accident insurer from all liability for death or disability caused by the accident. Accident policies are not intended to be restricted only to an Apollo or Hercules.

Indeed, the Florida law itself on the subject is in complete harmony with Kentucky law. Thus, in **Jones v. General Accident, Fire & Life Assur. Corp.**, 118 Fla. 648, 159 So. 804, the Florida Supreme Court held that an insurer against effects resulting directly and exclusively from bodily injury sustained solely through external, violent, and accidental means is liable where bodily injury directly caused a dormant disease, not then progressively tending to cause death, to become progressively active whereby death of insured resulted, although bodily injury would not have caused death of insured had he not had the dormant disease.

CONCLUSION

For the foregoing reasons, this petition for certiorari should be granted.

Respectfully submitted,

Neal P. Rutledge
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit was mailed this 21 day of March, A. D. 1958 to: **James A. Dixon, Jr., Dixon, DeJarnette, Bradford & Williams, Ainsley Building, Miami 32, Florida, counsel for respondent.**

Neal P. Rutledge

APPENDIX A

The opinion and judgment below are as follows:

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 16472

EDGAR W. STOKES,

Appellant,

versus

THE TRAVELERS INSURANCE COMPANY,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(November 8, 1957)

Before HUTCHESON, Chief Judge, and TUTTLE and WISDOM, Circuit Judges.

PER CURIAM: This case is a companion to Stokes v. Continental Assurance Company, 5 Cir., 242 F. 2d 893, and to Conttinental Casualty Company v. Stokes, 5 Cir., 249 F. 2d 152. The three cases originate from Stokes's efforts, after an alleged automobile accident on February 26, 1952, to recover benefits under health and disability policies held by him. In Stokes v. Continental Assurance Co., supra, we affirmed a judgement entered upon a jury verdict for the defendant insurance com-

pany. In Continental Casualty Company v. Stokes, supra, which was consolidated for trial with the present proceeding, but which has been considered as a separate appeal, we affirmed a judgment in favor of the plaintiff Stokes entered by the trial judge sitting without a jury. In the present case, Stokes appeals from a judgment, similarly entered by the trial judge alone, in favor of the defendant Travelers Insurance Company. The main question is whether the trial judge's findings are supparted by the evidence.

By stipulation of the parties this case is to be decided on the testimonial evidence in the record in the Continental Casualty case. The requirements of the Travelers policy, however, are different from those upon which recovery depended in the Continental Casualty case. There, as in the Continental Assurance case, the question was whether the insured had become disabled by bodily or accidental injury, *or* by sickness, and had suffered a loss of business time thereby. The Travelers policy, on the other hand provides for indemnification " . . . against loss resulting directly and independently of all other causes from bodily injuries sustained during the term of this Policy and effected solely through accidental means, subject to the provisions, conditions and limitations contained in this Policy."

The trial judge found as a fact:

" . . . 4. That the defendant, The Travelers Insurance Company, is liable to the plaintiff, Edgar W. Stokes, only if the plaintiff is permanently and totally disabled from injuries brought about solely by the aforesaid automoble acci-

dent within the meaning of the provisions of said policy, and that the said defendant is not liable to the plaintiff for disasbilities, if any, arising independent of his injuries in the aforesaid accident, or disabilities, if any, which were aggravated by the aforesaid accident.

"5 That the disabilities of the plaintiff from September 10, 1952 to the present time, and under which he is laboring at the present time, are conditions which existed prior to the aforesaid automobile accident, and if affected at all by the said accident were merely aggravated, and that his present disabilities were not brought about solely by the said accident within the meaning of the provisions of the defendant's policy of insurance, or, in the case of the plaintiff's claimed heart condition, if any, were unconnected with the aforesaid automobile accident or any other accidental occurrence within the coverage afforded by the aforesaid policy of insurance."

Without, therefore, reaching the question whether the plaintiff was totally and permanently disabled within the meaning of the policy, the trial judge determined that the plaintiff was not entitled to recover under the policy.

We are in agreement with the trial court in its interpretation of the policy of insurance as it must be applied to the facts of this case. We have carefully examined the evidence and find that it amply sustains the finding that the plaintiff's disability was not solely due

to the automobile accident. It cannot be said that the finding is clearly erroneous (Rule 52 (a), Fed. Rules Civ. Proc. 28 U.S.C.A.)

The judgement is affiremed.

JUDGMENT.

Extract from the Minutes of November 8, 1957.

EDGAR W. STOKES,

No. 16472. versus

THE TRAVELERS INSURANCE COMPANY

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby affirmed;

It is further ordered and adjudged that the appellant, Edgar W. Stokes, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

APPENDIX B

The opinion and judgment below are as follows:

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 16453

CONTINENTAL CASUALTY CO.,

Appellant,

versus

EDGAR WILLIAM STOKES,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(November 8, 1957)

Before HUTCHESON, Chief Judge, and TUTTLE and WISDOM, Circuit Judges.

PER CURIAM: Edgar W. Stokes, the plaintiff-appellee, brought this proceeding to obtain a declaration of his rights under a health and accident policy issued by the defendant-appellant, Continental Casualty. It is one of three cases in which Stokes has sought to recover benefits under health and disability policies held by him. In the companion case of Stokes v. Continental Assurance Company, 5 Cir., 242 F. 2d 893, we affirmed a judgment entered upon a jury verdict in favor of the defendant insurance company. The third case, Stokes v. Travelers

Insurance Company, 5 Cir., 249 F. 2d 155, which was consolidated for trial with the present proceeding, will be considered hereafter as a separate appeal.

This case and the Travelers case were tried upon the entire transcript of testimony and exhibits introduced in the Continental Assurance case, supra. In addition there were introduced certain depositions which had not been considered in the earlier trial, and the plaintiff Stokes testified anew in open court.

The plaintiff's policy provides for monthly payments to the insured, ". . . if [*he*] shall be disabled by accidental injury or by sickness and by reason of such disability shall necessarily suffer loss of business time . . .". The amount of the payments depends upon whether the loss of time is total or partial. The trial judge, sitting without a jury, found as a fact that since at least February 26, 1952, the insured ". . . has been totally and permanently disabled by reason of sickness within the meaning of said policy and has suffered a total loss of business time during the entire period."

The policy upon which the present action is brought is similar to the policy which we had for consideration in the Continental Assurance Company case. To a casual observer, it may appear inconsistent in view of these similar provisions that the defendant, the insurance company, should prevail in the jury trial in the reported case and that the plaintiff should be given a judgment in the present case. This apparent inconsistency is even more emphasized when it is considered that the trial court gave judgment for the defendant insurance company in the Travelers Insurance Company case.

The differing results in the three cases can be readily understood, however, when it is realized that this Court will affirm the judgment of a trial court based upon a jury verdict if there is any evidence to support it. It follows, of course, that if the jury had decided the case differently, the opposite verdict, if supported by evidence, would also be affirmed. In other words there may be complete inconsistency in fact between two findings either by two separate juries or by a jury on the one hand and a trial judge sitting wihout a jury on the other. Moreover, the apparent inconsistency is sometimes more imaginary than real when the testimony or other evidence before the trial court differs in some degree in the two different trials.

Without undertaking to analyze the testimony of all the witnesses as contained in the record of the first trial, or to point out specifically the additional testimony adduced both in open court and by deposition for consideration of the district court in the present case, we simply say that the record which is now before us contains evidence sufficient to support a finding of the trier of facts that Dr. Edgar W. Stokes had within the meaning of the policy suffered a total loss of business time and that such loss was permanent in nature.

We recognize of course that the requirements to be followed in the appellate review of findings of fact returned by a jury, mentioned previously in discussing the apparent inconsistency in the differing judgments in these cases, do not apply in the review under Rule 52(a), Fed. Rules Civ. Proc. 28 U.S.C.A. of findings rendered by a judge sitting without a jury and that evidence sufficient to support a jury verdict may not sustain a trial judge's

finding (See Orvis v. Higgins, 2 Cir., 180 F. 2d 537, certiorari denied 340 U.S. 810, 71 S.Ct. 37, 95 L.Ed. 595). It is also true, as we have observed (Galena Oaks Corporation v. Scofield, 5 Cir., 218 F. 2d 217), that the duty at this level to adhere to the trial court's findings as presumptively correct becomes less compelling as the ability of the appellate court to evaluate credibility and weigh evidence approaches that of the judge below, owing, for example, to the documentary or undisputed character of the proof. These considerations, however, neither require nor suggest reversal here.

The facts upon which the trial judge's finding rests are not undisputed. The plaintiff, in addition, testified in open court. Although the remaining proof is entirely documentary, it does not render thhe plaintiff's testimony immaterial to the decision of this case nor the trial judge's evalution of his credibility unimportant. Here, in fact, the opportunity to observe the plaintiff as a witness is peculiarly important, for his credibility not only influences the weight to be given to his own testimony in open court, but also affects to an appreciable degree the trustworthiness and persuasiveness of much of the documentary proof as well. The depositions and transcript of the earlier trial are devoted largely to medical evidence and are the only source of disinterested testimony upon the medical aspects of this case. The opinions favorable to plaintiff are derived primarily from his medical history as related by him and the dispute here, as it did in the Continental Assurance case, centers upon the authenticity of this history and the genuineness of the subjective symptoms plaintiff exhibited. The data upon which much of the expert testimony was based being singularly within the plaintiff's control, his credibility is

inevitably involved in assessing the appropriate weight to be given to that medical evidence. We cannot duplicate the opportunity of the trial judge to appraise that proof even though it reached him in documentary form, and we note that he acknowledged reliance upon the appearance and demeanor of the plaintiff upon the stand in evaluating the medical testimony. Under these circumstances, we are not persuaded, nor is there a predicate for holding that a mistake was committed below (see United States v. U. S. Gypsum Co., 333 U. S. 364, 68 S.Ct. 525, 92 L.Ed. 746).

The appellant's other points have been carefully examined but we find them to be without merit.

The judgment is affirmed.